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	)))))))	RENEWABLE ENERGY COALITION PREHEARING MEMORANDUM PHASE I

I. INTRODUCTION

The Renewable Energy Coalition (the "Coalition") submits this prehearing memorandum summarizing the Coalition's positions in this proceeding. The Coalition largely supports the Oregon Public Utility Commission's (the "Commission" or "OPUC") current policies and administrative rules implementing the Public Utility Regulatory Policies Act ("PURPA"), and urges the Commission to reject the proposals to radically revise the contracting process and manner for setting rates for qualifying facilities ("QF").

The Commission should make minor changes that build upon, rather that tear down, the solid and successful policies established in previous PURPA-related proceedings to improve the process for updating avoided costs, reduce disputes, and more fairly compensate QFs, especially those seeking contract renewals. Avoided costs rates should be updated more frequently than the current approximately two year cycle, but all updates occur at clear and specific times, and both the utilities and the QFs should be barred from seeking out of cycle updates. In terms of setting avoided cost rates, the Commission should generally maintain existing policies, but QFs seeking contract renewals during a resource sufficiency period should

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be paid for the capacity value they provide to the utilities.[1/] Finally, the Commission should modify its rules and policies regarding a legally enforceable obligation to reduce the utilities' ability to stonewall or impose other inappropriate barriers to QFs selling power at fair rates.

II. BACKGROUND

The Commission established comprehensive policies for both large and small QFs in 2005 and 2007, and rules and policies for regarding small generator interconnections in 2009. Docket No. UM 1129, Order No. 05-584 (2005); Docket No. UM 1129, Order No. 07-360 (2007); Docket No. AR 521, Order No. 09-196 (2009). While the Commission's rules and policies have been successful, they did not resolve all QF-related issues, and there have been a number of disputes between QFs and the utilities. Controversies have revolved around: 1) requests to update avoided costs with data from unacknowledged IRPs and outside of the two-year cycle; 2) interconnection disputes; 3) contract disputes, including when a legally enforceable obligation exists; and 4) utility efforts to make adjustments to avoided cost rates that have not been approved by the Commission. E.g., Coalition Petition, Docket No. UM 1457 (2009). The Commission opened this proceeding to address these issues, and Phase I of the proceeding addresses most issues, except for some contracting and interconnection issues.[2/]

1/ The methodology for setting avoided cost rates includes resource sufficiency and deficiency periods. The resource sufficiency period assumes that a utility has enough resources to meet its capacity needs and is resource "sufficient," while the deficiency period is based on the assumption that a utility needs new capacity resources. The demarcation between resource sufficiency/deficiency periods is the time the utility plans to acquire new capacity resources in its last integrated resource plan ("IRP"). Avoided cost rates during the resource sufficiency period are based on market electricity prices and are generally low, and avoided cost rates during the resource deficiency period are based on a baseload resource and are higher.

2/ The Coalition is not addressing the following issues in this Prehearing Memorandum: Issue 1D (should the Commission eliminate unused pricing options); Issue 2B (how should environmental attributes be defined); Issue 3E (use of the Renewable Portfolio Implementation plan); Issue 4B (third-party transmission), Issue 5C (should resource technology impact the size threshold); and Issue 6E (mechanical availability).

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III. ARGUMENT

1. The Commission Should Retain Its Proxy Resource Approach for Calculating Avoided Cost Prices (Issue 1Ai)

PacifiCorp and Portland General Electric Company ("PGE") should continue to use the current proxy plant method to set avoided costs, including setting non-standard contracts[3/] based on the Commission's specific adjustments adopted in Order No. 07-360. PacifiCorp has proposed to replace the current proxy plant methodology for non-standard contracts with an IRP-like method based on PacifiCorp's GRID model, and PGE proposes that nearly all avoided cost rates be negotiated between itself and the QF. Coalition/200, Schoenbeck/9-10; PGE/300, Macfarlane-Mortion/1.

PGE should not be able to ignore the Commission-established framework for negotiation of non-standard contracts, and PacifiCorp should not be permitted to use its new computer modeling approach to setting avoided costs. It is well known that a QF does not have equal bargaining power with electric utilities such as PGE.

PacifiCorp's modeling approach will add unnecessary complexity, increase QF costs, and not result in more accurate avoided cost rates. The traditional proxy resource method with Commission-approved adjustments is generally easier to use, "implement, and understand the resulting prices because the calculus is more straightforward and transparent." Coalition/200, Schoenbeck/8. In contrast, PacifiCorp's computerized GRID model approach will be hard to understand and "can be very expensive adding to the QF's transaction costs." Id. at 8-9. Both

[3/] Standard contracts are contracts between the QF and utility at or below the Commission-approved size threshold, which is ten megawatts ("MW"). Standard contracts are more streamlined with established avoided cost rates. Non-standard contracts are above the size threshold, and many aspects of the contract provisions and price terms must be negotiated pursuant to Commission-approved guidelines.

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the proxy and GRID model approach are highly dependent upon gas price forecasts, and the difference in avoided cost rates for wind, hydro and thermal resources "is negligible given the substantial amount of additional effort and loss of transparency required under the" PacifiCorp model approach. Id. at Schoenbeck/10.

2. Idaho Power Should Be Allowed to Use a Different Methodology (Issue 1Aii)

Idaho Power has demonstrated that it should be allowed to use the same methodology for setting avoided cost rates that has been approved by the Idaho Public Utility Commission ("Idaho Commission"). Coalition/100, Lowe/22-23. Specifically, the Coalition reviewed Idaho Power's methodology, and the differences in rates may be significant and more accurate for hydro resources. In addition, Idaho Power has a small footprint in Oregon, which supports use of one method in both its Idaho and Oregon jurisdictions. Finally, Idaho Power should not pick and choose among aspects of the methodology approved by the Idaho Commission, but should use the exact methodology that it uses in Idaho. Id. at Lowe/23.[4/]

3. QFs Should Have the Right to Elect Levelized Avoided Costs in Limited Circumstances (Issue 1B)

Existing QFs should have the ability to select levelized rates in limited circumstances. Unlike new QFs that have some flexibility regarding the date they start selling power to the utilities, existing QFs have specific contract expiration dates, few if any potential buyers for their power, and no ability to time their on-line date with higher resource deficiency avoided cost prices. E.g., Coalition/100, Lowe/22-23. Levelization may be necessary to smooth

[4/] The Coalition and Idaho Power submitted testimony regarding the appropriate capacity factors that should be used for setting avoided cost rates in Idaho Power's methodology. Coalition/200, Schoenbeck/4-6; Idaho Power/400, Stokes/18-22. The Coalition and Idaho Power both now agree that the capacity factors should be based on the Idaho Commission approved methodology, and this issue is no longer in dispute.

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out low avoided cost rates during the first years of a contract renewal, especially if the QF needs to make significant capital investments or if there are long periods of resource sufficiency with low avoided cost rates. Levelization for QFs, however, may not be necessary in most circumstances if the Commission maintains the current policy of 15 year fixed price contracts, ensures that existing projects receive value for capacity when entering into a replacement power purchase agreement, and sufficiency periods do not extend beyond a few years. See id.

4. Existing QFs Should Be Paid for the Capacity they Provide to Utilities During the Resource Sufficiency Period (Issue 1C)

Existing QFs should be provided energy and capacity payments during the resource sufficiency period. PacifiCorp and PGE propose that QFs renewing their contracts should only be paid market energy prices during the resource sufficiency time period while Idaho Power and the Coalition agree that existing QFs should be paid for their energy and capacity value during the resource sufficiency period. Coalition/200, Schoenbeck/12-13; Idaho Power/400, Stokes/24.

Both the Idaho Commission and the California Public Utility Commission recognize that the avoided cost rates for existing QFs that renew their contracts should include compensation for both the capacity and energy they provide to the utilities during the periods in which the utilities are resource sufficient. Coalition/200, Schoenbeck/13. In Idaho, like Oregon, avoided costs for new QFs during the resource sufficiency period include payments for energy only, and do not include both energy and capacity payments when the utility is capacity deficient. The Idaho Commission, however, concluded that existing QFs are factually different,

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and existing QFs renewing their contracts should be paid both energy and capacity during the sufficiency period:

> It is logical that, if a QF project is being paid for capacity at the end of the contract term and the parties are seeking renewal/extension of the contract, the renewal/extension would include immediate payment of capacity. An existing QF's capacity would have already been included in the utility's load and resource balance and could not be considered surplus power. Therefore, we find it reasonable to allow QFs entering into contract extensions or renewals to be paid capacity for the full term of the extension or renewal.

Idaho Commission Case No. GNR-E-11-03, Order No. 32697 at 21-22 (2012).

The Oregon Commission should similarly ensure that existing QFs that renew or extend their contracts are paid both capacity and energy during the resource sufficiency period. Providing renewing QFs capacity payments would treat QFs and utility-owned resources more comparably and address the problem of existing QFs always being paid market prices during the first years of any contract renewal. Coalition/200, Schoenbeck/12. Utilities plan on existing QFs continuing to provide capacity after the end of their current contract in the IRP process, which results in existing resources helping to defer the acquisition of new capacity resources. Since existing QFs provide capacity benefits during the resource sufficiency period, they "should not be penalized in the form of reduced capacity value in subsequent follow on contracts." Coalition/200, Schoenbeck/12-13; Coalition/102, Lowe/3.

5. Different Renewable Avoided Cost Rates for Different Renewable Resources (Issue 2A)

The Coalition supports the concept of distinguishing between baseload and intermittent renewable resources when setting renewable avoided cost rates. Renewable avoided cost rates during the resource deficiency period are based on a utility's next avoidable renewable

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resource, which is currently a wind plant. Baseload renewable QFs have a greater capacity value than a wind resource, allow the utilities to avoid integration costs, and should be compensated for this more valuable power. In principle, the Coalition supports PGE's overall approach to treating intermittent and baseload renewable QFs differently. Coalition/200, Schoenbeck/4.[5/]

6. The Commission Should Not Modify the Oregon Rules that Specify the Non-energy Attributes of Energy Generated by the QF Remain with the QF (Issue 2C)

The Commission should not revise OAR § 860-022-0075, which allows the owner of a renewable QF to retain ownership of the non-energy attributes associated with the renewable electricity. Coalition/100, Lowe/23-24. This allows a renewable QF to keep the renewable energy credits and sell electricity under standard avoided cost rates to PacifiCorp and PGE, or to sell both the renewable energy credits and electricity under renewable avoided cost rates. The Commission, however, should not adopt a broad definition of non-energy attributes, which would inappropriately result in the QF selling both renewable energy credits and all other non-power attributes to the utility when selling power at renewable avoided cost rates. Id.

7. The Commission Should Revise the Current Schedule of Avoided Cost Updates (Issue 3A)

The Coalition recommends that avoided cost rates be updated on an annual basis, which should be one year from the effective date of the last change in avoided cost rates. Coalition/100, Lowe/10. It would also be appropriate to allow an update after the Commission acknowledges an IRP, as long as it does not result in avoided cost updates that occur in rapid

5/ The Coalition was not provided the details regarding how PGE's methodology would work and the Commission should not approve any specific methodology for accounting for integration costs. Coalition/200, Schoenbeck/4. Parties should be allowed to review any proposed methodology in a subsequent filing.

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succession. To avoid "pancaked" updates, the Coalition recommends that "the annual update be deferred until after IRP acknowledgement" if an annual update is scheduled to occur within 90 days of when an IRP is scheduled to be acknowledged. Id. [6/]

The Coalition recognizes that a number of parties have recommended that annual updates occur at a specific calendar date. The Coalition is concerned that using a specific calendar date will create unstable avoided cost rates and "'pancaking' of price changes" when combined with avoided cost rate updates that occur 30 days after an IRP is acknowledged. Id. at Lowe/11. If annual updates occur at a specific time and there are requests for out-of-cycle updates or updates related to the acknowledgement of utility IRPs, then there could be multiple changes to avoided cost prices over a single calendar year. The Coalition, however, would support a single annual update at a specific calendar date if there is no update related to acknowledgement of a utility IRP or other considerations. Either approach would result in more frequent updates than under the current approach, but ensure that QFs can count on avoided cost rates remaining in effect for a reasonable period of time.

8. The Commission Should Bar Utilities and QFs From Proposing Out-of-Cycle Updates (Issue 3B)

There should be no updates outside of regularly approved or scheduled updates. Coalition/100, Lowe/12; Coalition/200, Schoenbeck/14-15. QFs often "plan to complete their negotiation process before a scheduled update will occur" so that "they can obtain price certainty and not have their avoided cost rates significantly change in the middle of the negotiation

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6/ Pancaking of avoided cost rate changes refers to two or more rates changes that can occur in a brief period of time. Frequent changes in avoided cost rates cause significant harm to QFs that plan their operations and obtain their financing based on the assumption that the then-current avoided cost rates will be in effect until the next scheduled avoided cost rate change.

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process." Coalition/100, Lowe/12. The Commission should establish policies that allow QFs "to plan on whatever cycle the Commission approves remaining in effect, and the Commission should make it clear that out of cycle updates close to normally scheduled updates are particularly inappropriate." Id.

9. The Commission Should Limit Factors that Can Be Adjusted in the Annual Update (Issue 3C)

Annual updates should adjust only three factors: 1) updated gas prices; 2) new executed contracts in excess of four years; and 3) previously reviewed load forecasts. Coalition/200, Schoenbeck/17-18. These are the primary factors that drive changes in avoided cost rates, and allowing the utilities to annually update any and all elements of their avoided costs will normally have limited impact on the avoided cost rates. In addition, a complete annual update will create a substantial burden on QFs and Staff to analyze and evaluate the reasonableness of any changes, and "it could allow for game playing by the utility, as there are many modifications that could be made simply to lower prices for the QF by parameters that are not even reviewable by the QF developer." Id. at Schoenbeck/17.

10. Information from IRPs that Have Not Been Acknowledged Should Not Be Factored into the Calculation of Avoided Cost Updates (Issue 3D)

Utilities should not be permitted to use data from IRPs or IRP updates that have not been acknowledged in the calculation of avoided cost updates or to increase the frequency of avoided cost rate changes. Coalition/100, Lowe/12. The only exception is that the annual update should use updated gas prices or new contracts, even if that same information is included in a not- yet acknowledged IRP.

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11. The Costs of the Integration of Intermittent Resources and the Benefits of Baseload Resources Should be Included in the Calculation of Avoided Cost Rates (Issue 4A)

The Coalition conceptually agrees that the costs associated with the integration of intermittent resources should be considered when setting avoided cost rates. If the Commission elects to include integration costs in avoided cost rates, then any such policy should be reciprocal and compensate baseload QFs that do not require the utility to incur integration costs. For example, if integration costs are included when calculating PGE's and PacifiCorp's renewable avoided cost rates, then a baseload renewable QF should have their renewable avoided cost rates adjusted to account for the fact that they do not cause the utility to incur integration costs.

12. The Commission Should Not Change How It Accounts for the Seven Factors (Issue 4C)

The Commission currently accounts for the seven Federal Energy Regulatory Commission ("FERC") factors for adjusting avoided costs by using the proxy plant method standard avoided costs rates, and providing specific guidance to QFs and the utilities for negotiating each factor for non-standard QFs above 10 MWs. Docket No. UM 1129, Order No. 05-584 (2005) and Order No. 07-360 (2007). In Order No. 05-584, the Commission held that the utilities cannot make adjustments for any basis, including the FERC factors, for standard contracts. Order No. 05-584 at 39. The Commission explained that standard contracts are not intended to allow flexibility to negotiate specific adjustments, and that it "is inappropriate to request that standard contracts be subject to potential negotiation to address project-specific characteristics." Id. For larger non-standard QFs, the Commission later adopted specific methodologies and approaches to account for specific FERC factors, and concluded that utilities

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were not allowed to make adjustments for other FERC factors or any other factor, unless specifically approved by the Commission. Order No. 07-370 at 15-29, and Appendix A at 3.

The Commission should reject: 1) Staff's proposal to adjust PGE's and PacifiCorp's standard contracts for the resource capacity value; 2) PacifiCorp's proposal to replace its current approach for non-standard contracts with its computer model; and 3) PGE's proposal to allow the utility unfettered discretion to negotiate nearly all terms and conditions. See Coalition/200, Schoenbeck/10-11. PGE's approach is particularly harmful because it "wishes to retain discretion to make up on a case by case basis how to account for the FERC factors." Id. at Schoenbeck/10. PGE refused to identify how these factors would be accounted for, or why the Commission should abandon its well-developed specific methodologies "that provide certainty and clear guidance to both QFs and the Utilities." Id. at Schoenbeck/11.

13. The Commission Should Retain the 10 MW Cap for Standard Contracts (Issue 5A)

The Commission should reject the proposals to lower the 10 MW cap for standard contracts. Coalition/100, Lowe/25-27; Coalition/300, Camarata-Pugh/6-8. The Commission's decision to increase the size threshold from 1 to 10 MWs was a very positive development that "resulted in moderate development rates for new projects and has contributed to the continuing operation of many existing projects." Coalition/100, Lowe/25. The need to negotiate non-standard contracts can significantly increase costs, create uncertainty and delays, and harm QFs; and most QFs are under 10 MWs. Coalition/102, Lowe/6-10, 26-28. Many small QFs are not sophisticated energy developers and should not be required to conduct an expensive, lengthy, and burdensome negotiation process simply to enter into a normal PURPA contract with a utility. Coalition/300, Camarata-Pugh/6-8. Finally, the Coalition notes that many of the utilities' and

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Staff's concerns with the current size threshold are directed at wind resources, which can be better accounted for by setting accurate avoided cost rates and preventing disaggregation rather than lowering the size threshold for all QFs. Coalition/100, Lowe/27.

14. An Oregon QF Should Be Able to Obtain Renewable Avoided Costs and Sell its RECs in Another State During the Resource Sufficiency Period (Issue 5D)

The Coalition supports the Commission's recent order on renewable avoided costs, which concluded that QF should retain the renewable energy credits during the renewable resource sufficiency period, but must sell the renewable energy credits during the resource deficiency period. Coalition/100, Lowe/27; Docket No. UM 1396, Order No. 11-505 at 9-10 (2011). Therefore, an "Oregon QF should be able to sell any renewable energy credits associated with power generated during the resource sufficiency period anywhere, but should not be able to sell renewable energy credits associated with power generated during the resource deficiency period as those should be transferred to the utility." Coalition/100, Lowe/27.

15. A Legally Enforceable Obligation Should Exist When the QF Has Provided All Required Information and Obligates Itself to Sell Power to the Utility (Issue 6B)

The Oregon administrative rules and recent Commission precedent require a QF to enter into a binding written contract before a legally enforceable obligation occurs. OAR § 860-029-0010(29); International Paper v. PacifiCorp, Docket No. UM 1449, Order No. Order No. 09-439 (2009). Oregon's current policy is inconsistent with FERC precedent, which has repeatedly held that a written contract is not required to form a legally enforceable obligation. Rainbow Ranch LLC, 139 FERC ¶ 61,077 at PP. 24-27 (2012); Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 at P. 36 (2011). FERC has explained that a QF can sell power to a utility

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pursuant to a legally enforceable obligation, which includes but is not limited to a written contract. Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 at P. 36 (2011).

It would be impossible for the Commission to establish a firm rule on legally enforceable obligations that addresses all potential situations. Instead, the Commission should adopt a general policy that a legally enforceable obligation can exist after a QF expresses an unequivocal commitment to sell electricity to a utility and has provided all required project information to the utility.

The Commission should not establish a policy that a legally enforceable obligation cannot occur until after the utility provides a final purchase power agreement, because a utility can inappropriately delay the process before it provides a final contract. Coalition/100, Lowe/13-14. Similarly, a QF should not be required to sign a draft contract that may have harmful, unfavorable or even illegal provisions in order to create a legally enforceable obligation. Id. at Coalition/100, Lowe/15. In addition, it would be premature for the Commission to establish a specific time in the negotiation process that created a legally enforceable obligation because Phase II of this proceeding will revisit and potentially modify that standard contracting process, steps and timelines (Issue 6A).

Finally, the Commission should conclude that a legally enforceable obligation can occur greater than one year before power deliveries. PGE's recommendation for there to be a one year limit between power deliveries and a legally enforceable obligation represents a fundamental lack of understanding of how the QF contracting process works, which may be based on PGE's lack of experience in successfully negotiating QF contracts of any type. It is extremely difficult for either new or existing QF contracts to enter into new purchase power agreements close to the time of power deliveries because they must first obtain financing and complete their interconnections, which typically takes longer than one year. The Coalition believes it would be more appropriate to defer this issue to Phase II, in which the Commission will address nearly the exact same issue of the maximum time between contract execution and power delivery (Issue 6C), and will have the relevant issues of the contracting and interconnection agreement process to address (Issues 6A, 6E, 6F, 6G, 6H, 6J, 7A and 7B).

16. The Commission Should Keep Its Current Contract Term Policy (Issue 6I)

The Commission should again reject proposals to lower the QF contract term, and reaffirm its policy that QFs should have the option to select contracts of up to 20 years, with fixed prices for the first 15 years. Docket No. UM 1129, Order No. 05-584 at 19-20. Most QFs request contract terms with fixed prices for at least a 15-year fixed price term because longer terms are needed to ensure that QFs can meet financing requirements, make longer term plans, and operate during the resource sufficiency period when avoided costs only include market-based prices. Coalition/100, Lowe/20; Coalition/200, Schoenbeck/21-26; Coalition/300, Camarata-Pugh/6-8. Fifteen year contract terms may become even more necessary if utilities propose longer resource sufficiency periods, as PacifiCorp has recently done its new IRP that includes a decade long resource sufficiency period instead of the traditional two to four years. Longer contract terms are also warranted to comparably treat QFs with utility resources that are included in rates for their economic life. Coalition/200, Schoenbeck/25-26.

The Commission should also reject PGE's proposal for shorter five-year fixed price contracts for existing QFs. Existing QFs warrant long-term contracts as they have been providing capacity to the utilities and they also have financing and planning needs that warrant

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longer fixed price contracts. Id.; Coalition/300, Camarata-Pugh/6-8. The practical impact of only allowing a five-year fixed price contract and the current sufficiency/deficiency pricing method is that "several years of the five year period would be at market prices reflecting only short-term energy costs." Coalition/200, Schoenbeck/24. In addition, if a utility's next avoidable resource was greater than five years (as is the case in PacifiCorp's newly filed IRP), then an existing QF might unable to ever enter into a contract that ever has higher prices that include compensation for both energy and capacity, despite the fact that existing QFs help avoid the need for utilities to acquire new capacity resources.

III. CONCLUSION

The Coalition urges the Commission to adopt its recommendations in this proceeding to maintain the existing PURPA framework with relatively minor changes to facilitate the contract negotiation and avoided cost rate setting process, and more accurately compensate existing QFs for the capacity value they provide to the utilities.

Dated this 20th day of May, 2013.

Respectfully submitted,

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May 20, 2013

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Dear Filing Center:

Enclosed for filing in the above-referenced docket, please find the original and five (5) copies of the Renewable Energy Coalition Prehearing Memorandum.

Thank you for your assistance, and please do not hesitate to contact our office if you have any questions.

Sincerely,

/s/ Jesse Gorsuch
Jesse Gorsuch

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Renewable Energy Coalition Prehearing Memorandum upon the parties on the service list via electronic mail only, as all parties have waived paper service.

Dated at Portland, Oregon, this 20th day of May, 2013.

Sincerely,

/s/ Jesse Gorsuch
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