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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005 (Filed May 5, 2011)

COMMENTS OF PACIFICORP (U 901 E) ON THE ORDER INSTITUTING RULEMAKING REGARDING IMPLEMENTATION AND ADMINISTRATION OF THE RENEWABLES PORTFOLIO STANDARD

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Pursuant to Rule 6.2 of the California Public Utilities Commission (Commission or CPUC) Rules of Practice and Procedure and instructions in the Order Instituting Rulemaking Regarding Implementation and Administration of the Renewables Portfolio Standard Program filed on May 5, 2011 (OIR), PacifiCorp (U-901-E), d.b.a. Pacific Power (PacifiCorp or Company) hereby provides these comments on the OIR.

I. Introduction and Summary

PacifiCorp is a multi-jurisdictional electric utility (MJU) with approximately 1.7 million customers in California, Idaho, Oregon, Utah, Washington and Wyoming. Approximately 45,000 of those customers are located in Shasta, Modoc, Siskiyou and Del Norte counties in Northern California, representing less than two percent of the total retail load served across PacifiCorp's six-state system. PacifiCorp's California service territory is not connected to the California Independent System Operator (CAISO), but rather PacifiCorp is the balancing authority for its California service territory, which is operated on an integrated basis with other states in the western portion of its multi-state territory. Historically, the Commission has deferred to PacifiCorp's use of its comprehensive Integrated Resource Plan (IRP) in lieu of requiring PacifiCorp to comply with RPS planning requirements.

These unique characteristics of PacifiCorp, the only MJU in California, were recognized

by the Legislature when enacting California law. Pertinent to these comments and the Commission's implementation of the renewables portfolio standard (RPS) program, Senate Bill No. 2 of the California Legislature's 2011-2012 First Extraordinary Session (SB 2x) describes the unique RPS requirements that apply to an MJU. These requirements differ from the requirements of other load serving entities (LSEs) and must be considered by the Commission when determining how to modify the RPS program. Specifically, it is vital that the Commission recognize the following RPS requirements for PacifiCorp when modifying the RPS program:

- PacifiCorp is exempted from the requirement to procure renewable generation pursuant to the procurement content limitations of pending Public Utilities Code Section 399.16.[1]
- PacifiCorp can use certain renewable facilities located outside California to meet RPS procurement requirements.[2]
- PacifiCorp can use its IRP to meet the requirement to prepare a renewable energy procurement plan.[3]
- PacifiCorp's use of its comprehensive IRP and separate planning process necessitates that PacifiCorp's ability to contract and build within California remain unaffected by SB 2x.

Although Section 399.17 includes other provisions as well, the four points outlined above are the main differences between RPS requirements for PacifiCorp and other utilities.

Procedurally, PacifiCorp recommends that the Commission make an up-front determination confirming PacifiCorp's interpretation of Section 399.17. This will provide PacifiCorp with the regulatory certainty necessary to make informed procurement and planning decisions. Additionally, the Commission should confirm that PacifiCorp need not participate in certain portions of the proceeding that will not apply to PacifiCorp. For example, PacifiCorp

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[1] *See*, pending Public Utilities Code Section 399.17(b). Unless otherwise noted, all subsequent section citations refer to the pending Public Utilities Code sections of SB 2x.

[2] Section 399.17(b).

[3] Section 399.17(d).

should be excused from participating in portions of the proceeding addressing the various procurement buckets and position limits described in Section 399.16. Avoiding participation in inapplicable portions of the proceeding will reduce unnecessary administrative burdens and costs associated with this proceeding.

II. Initial Priorities

The Administrative Law Judge's Ruling Setting Prehearing Conference issued on May 23, 2011 (ALJ Ruling), directs parties "to provide their preliminary views on the highest priority topics for the initial months of this proceeding."[4] Pursuant to this directive, PacifiCorp believes that topic numbers "7 - Modify and Develop New Rules for Small and Multi-Jurisdictional Utilities" and "4 – Develop RPS Cost Containment Mechanism" in Attachment A to the ALJ Ruling are of the highest priority for PacifiCorp. More detailed discussions of these topics are included in the sections below.

With respect to topic number 7, PacifiCorp recommends that the Commission make an up-front determination that Sections 399.17 and 399.18 of the Public Utilities Code exempt the small and multi-jurisdictional utilities (SMJUs) from having to comply with many sections of SB 2x and also allow the SMJUs to utilize different methods to meet RPS requirements. As discussed in greater detail in the sections below, the differing RPS requirements applicable to the SMJUs are straightforward and could be addressed by the Commission in its scoping memo, thereby reducing administrative costs of participating in this proceeding. The straightforward nature of Sections 399.17 and 399.18 will also ensure that evidentiary hearings are not required.

With respect to topic number 4 of Attachment A of the ALJ Ruling, PacifiCorp believes that utility specific limitations are appropriate and that it may be simplest to have utilities submit

[4] ALJ Ruling, p. 1.

cost containment proposals after the Commission hosts a workshop on the issue. PacifiCorp does not believe that evidentiary hearings will be required to address this topic. Specific recommendations on what should be considered when evaluating cost containment mechanisms are addressed in the sections below.

PacifiCorp provides the following recommended schedule for the Commission to address topics 4 and 7 of Attachment A of the ALJ Ruling:

Event	Scheduled or Proposed Date
Comments on OIR	May 31, 2011
Reply Comments on OIR	June 9, 2011
Prehearing Conference	June 13, 2011
Scoping Memo (addressing what provisions of SB 2x do ***not*** apply to small and multi-jurisdictional utilities)	To Be Determined
Workshop on Cost Containment Mechanism	21 days after Scoping Memo
Utility Proposals on Cost Containment Mechanism	20 days after Workshop
Comments on Cost Containment Mechanism Proposals	10 days after Proposals
Reply Comments on Cost Containment Mechanism Proposals	7 days after Comments
Proposed Decision Adopting Cost Containment Mechanism	30 days after Reply Comments
Comments on Proposed Decision	20 days after Proposed Decision
Reply Comments on Proposed Decision	5 days after Comments
Adoption of Proposed Decision	At the next CPUC business meeting at least 30 days after issuance of the Proposed Decision

With respect to other topics, PacifiCorp recommends that the Commission address them in the following order:

1. (1) – Modify Renewables Portfolio Standard (RPS) compliance rules.

2. (2) – Modify renewable energy credit (REC) trading rules.
3. (6) – Modify RPS enforcement rules.
4. (3) – Modify RPS procurement rules.
5. (8) – Revise Standard Terms and Conditions of RPS procurement contracts.
6. (5) – Implement Pub. Util. Code § 399.20, as amended.
7. (9) – Develop need assessment methodology to determine RPS resource need and integration into RPS procurement plans.

Many of these issues are described in greater detail in the sections below.

III. Preliminary Scoping Memo – Issues to be Considered

A. Issue 1 – Modify Program to Implement Recent Legislation

Issue 1 of the preliminary scoping memo of the OIR addresses required modifications to the RPS program to implement SB 2x. A more comprehensive list of these required program modifications is included in Attachment A of the OIR. This section addresses Attachment A of the OIR.

1. Attachment A – Section 6 – Modify and Develop New Rules for Small and Multi-Jurisdictional Utilities

PacifiCorp does not believe that a separate schedule or track is necessary to modify the RPS program for SMJUs. Many of the RPS program modifications will impact all LSEs and should be addressed early in the proceeding for the benefit of all. For many of these common required program modifications, PacifiCorp believes it is important to provide clarity with respect to the new requirements applicable to all LSEs. Early clarity for LSEs, including SMJUs, will ensure that such utilities have the certainty required to make reasonable procurement decisions.

Although PacifiCorp does not believe that a separate track is required to address RPS

program modifications for SMJUs, when making program changes the Commission should recognize that the SMJUs are subject to different RPS requirements than other LSEs and make an up-front determination about the extent of requirements applicable to the SMJUs. By making an up-front determination, the SMJUs will not only have clarity regarding certain procurement requirements, but will also have the clarity needed to determine when to actively participate in the proceeding. Specifically, the Commission should make an up-front determination about Sections 399.17 and 399.18 of the Public Utilities Code and the allowance that the SMJUs may utilize different methods to meet RPS requirements. Sections 399.17 and 399.18 also exempt the SMJUs from having to comply with many other sections of SB 2x. Accordingly, it is very important when developing and implementing RPS program changes that the Commission recognizes the unique and distinct RPS requirements that are applicable to the SMJUs and therefore ensure that program requirements applicable to other LSEs are not applied to the SMJUs in contravention of SB 2x.

The differing RPS requirements applicable to PacifiCorp are straightforward. Accordingly, the Commission need not include PacifiCorp when determining many RPS program changes. For example, Section 399.17(b) provides:

> [E]lectricity products from eligible renewable energy resources may be used for compliance with the renewables portfolio standard procurement requirements ***notwithstanding any procurement content limitation in Section 399.16***…. (Emphasis added.)

Therefore, many of the RPS program modifications relating to Section 399.16 will not apply to PacifiCorp as it is not subject to the procurement content limitations of that section.

Similarly, PacifiCorp may utilize different resources to meet RPS requirements. For PacifiCorp, as an MJU, "an eligible renewable energy resource includes a facility that is located

outside California," provided that certain requirements are satisfied.[5] PacifiCorp is also subject to different planning requirements and is allowed to use "an integrated resource plan prepared in compliance with the requirements of another state utility regulatory commission, to fulfill the requirement to prepare a renewable energy procurement plan."[6] Therefore, the Commission need not include PacifiCorp when developing program modifications relating to planning requirements.

Due to the explicit statutory RPS requirements applicable to PacifiCorp, many of the topics described in Attachment A of the OIR do not pertain to PacifiCorp. However, rather than discuss each specific applicable or inapplicable topic, PacifiCorp focuses on what it believes the Commission should examine as the more relevant and important issues. Not only will addressing these provisions help provide clarity to all LSEs, it will help meet California's RPS goals. In addition to these comments, the clear statutory provisions applicable to PacifiCorp will help guide the Commission when determining how to modify the RPS program for an MJU.

2. Attachment A – Section 4 – Develop RPS Cost Containment Mechanism

As discussed above, one of the most important issues for the Commission to address is how an RPS cost containment mechanism will be applied to each utility. It is vital that the Commission establish rules on how a cost containment mechanism will function so that utilities know when certain procurement should be deferred due to high market costs. For example, without knowing potential cost limitations, a utility could procure renewable generation to meet California's RPS goals only to later learn that such procurement was above the adopted cost limitation. Such ambiguity will hinder utilities from making sound procurement and investment

[5] Section 399.17(b).

[6] Section 399.17(d).

decisions and may frustrate the ability to meet California's RPS goals in a manner that properly limits customer costs.

For PacifiCorp, Section 399.17(f) describes the applicable cost limitation:

> Procurement expenditures for electricity products from eligible renewable energy resources pursuant to this section by an electrical corporation or successor entity meeting the requirements of subdivision (a) shall be subject to a limitation on procurement expenditures established by the commission pursuant to subdivision (c) of Section 399.15.

There are a variety of questions that must be considered when determining how a cost containment mechanism will be implemented, particularly for an MJU like PacifiCorp.

First, the Commission must determine how to structure the cost containment mechanism. This is particularly complex for PacifiCorp due to its procurement of resources on a system-wide basis. Section 399.15 states that the limitation shall be based on: (1) "[t]he most recent renewable energy procurement plan"[7] (the IRP for PacifiCorp), (2) "[p]rocurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources,"[8] and (3) "[t]he potential that some planned resource additions may be delayed or canceled."[9]

Rather than establishing a unique California limitation value for PacifiCorp, the Commission should defer to the explicit statutory authority of Section 399.17 and continue to allow PacifiCorp to conduct system-wide procurement in accordance with its IRP. Consistent with this approach, the Commission should allow PacifiCorp to develop a cost limitation that is comparable to PacifiCorp's costs of its renewable resources in the IRP and or the cost to meet PacifiCorp's RPS compliance requirement for California.

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[7] Section 399.15(c)(1).

[8] Section 399.15(c)(2).

[9] Section 399.15(c)(3).

The Commission will also have to determine whether the adopted cost containment mechanism will provide a basis for excusing utilities for failing to meet RPS procurement targets. Presumably, if no resources can be procured at or below the cost limitation, the utility should not be required to pay for such resources. However, if the operation of the cost-containment mechanism results in under-procurement of the required volume of renewable energy, the utility and its customers should not then be subjected to a penalty. This is consistent with the concept of the waiver provisions found in the statute.

Additionally, PacifiCorp emphasizes that when determining any cost containment mechanism the Commission must preserve the confidentiality of any data submitted in order to develop the cost limitation. It is crucial that market sensitive information and other confidential data associated with procurement efforts remain protected to preserve the integrity of PacifiCorp's procurement and negotiation processes and to ensure that costs remain competitive.

Lastly, PacifiCorp recommends that in the Commission's efforts to track whether utilities may be close to exceeding cost limitations and related reporting to the Legislature, the Commission should ensure that such efforts are streamlined and efficient. Any requirements that utilities report to the Commission should be scrutinized to ensure that such reporting is not duplicative or unnecessary. To the extent that the Commission can utilize existing reporting requirements to collect necessary data, PacifiCorp recommends that it do so.

3. Attachment A – Section 1 – Bullet 2 – Modify Flexible Compliance Rules, Including Implementing Different Banking Rules for Different Types of RPS Contracts (§ 399.13(a)(4)(B).)

According to Section 399.13(a)(4)(B), retail sellers may "accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period." PacifiCorp seeks clarification that retail sellers will be allowed to apply

excess procurement that occurred before January 1, 2011 towards any future compliance periods. Any other result would constitute an impermissible taking that will effectively deprive customers of the value of previously procured renewable generation. Therefore, the Commission should clarify that *any* excess renewable procurement may be applied to any subsequent compliance period.

PacifiCorp also seeks clarification on how the Commission's existing flexible compliance rules will apply going forward. SB 2x removed the statutory provisions that required creation of flexible compliance rules, but the new provisions do not prohibit the Commission from exercising its inherent discretion to continue some flexible compliance program elements. PacifiCorp recommends that the other existing flexible compliance provisions, namely allowable deficit deferrals and earmarking, remain in effect to help the timelines that run between initial resource contracting and commercial operations.

4. Attachment A – Section 2 – Bullet 2 – Modify REC Trading Rules to Provide that, in Order to Count for RPS Compliance, RECs must be Retired in the Tracking System Within 36 Months from the Initial Date of Generation of the Associated Electricity (§ 399.21(a)(6).)

PacifiCorp does not oppose the requirement to retire RECs within WREGIS no later than 36 months after creation. However, PacifiCorp seeks clarity about the retirement process and how it will impact allowable banking of excess renewable procurement. For example, if a retail seller had excess renewable procurement from 2011 that it retired within WREGIS, that retail seller should be allowed to apply that surplus for purposes of its CPUC compliance efforts in any subsequent year, even years beyond 2014. Indeed, SB 2x provides that such excess procurement may be "applied to any subsequent compliance period."[10] Therefore, the Commission must ensure that RECs retired in a given year may be applied to a subsequent compliance period, even

[10] Section 399.13(a)(4)(B).

if that compliance period occurs more than 36 months after the date the REC was created. This rule is particularly important because compliance with RPS procurement obligations is sensitive both to resource production, but also to customer demand. If customer demand is lower than forecast due to lower than expected load forecast or weather conditions or perhaps cost impacts associated with greenhouse gas (GHG) regulation, the utility could carry forward surplus retired procurement that it holds for customers' benefit.

5. Attachment A – Section 2 – Bullet 4 – Define New Terms, e.g., "Firmed and Shaped", "Incremental Energy" and "Unbundled" RECs. (§ 399.16(b).)

PacifiCorp recommends that as soon as possible the Commission determine that the California Energy Commission (CEC) will be responsible for defining "firmed and shaped" as the CEC has historically done.

6. Attachment A – Section 3 – Bullet 1 – Modify the Bid Evaluation Methodology (i.e., least-cost best-fit) to Include Evaluations of Project Viability and Workforce Recruitment (§ 399.13(a)(4)(A)(iii).)

Section 399.17 exempts PacifiCorp from any requirement to utilize a least-cost best-fit bid evaluation methodology. Pursuant to Section 399.17(d), PacifiCorp can utilize its IRP in place of a renewable procurement plan, provided the IRP meets the requirements of other sections, including Section 399.13. The Company's integrated resource planning and procurement process applies a least-cost resource portfolio criterion that considers resource risks, planning uncertainties, supply reliability, resource diversity, and the long-run public interest. Furthermore, PacifiCorp's IRP supports informed decision-making on resource procurement by providing an analytical framework for assessing resource investment tradeoffs, including supporting multiple requests for proposals (RFP) bid evaluation efforts. Accordingly, as PacifiCorp anticipates using its IRP in conformance with Sections 399.13 and 399.17, amongst

others, PacifiCorp should not have to utilize a least-cost best-fit bid evaluation methodology.

7. Attachment A – Section 7 – Bullet 1 – Receive Annual Reports from Utilities that own Electrical Transmission Facilities Which Identify Electrical Transmission Facilities and Upgrades that are Reasonably Necessary to Achieve the RPS (§ 399.13(a)(2).)

According to Section 399.13(a)(2), utilities must submit a report "identifying any electrical transmission facility, upgrade, or enhancement that is reasonably necessary to achieve the renewable procurement requirements of this article." PacifiCorp seeks clarification that for an MJU like PacifiCorp, such a report would only need to reflect the transmission facilities and upgrades contemplated for its California territory.

B. Issue 2 – Procurement Plans

As described above in Sections III.A.1 and III.A.6 above, PacifiCorp may utilize its IRP "to fulfill the requirement to prepare a renewable energy procurement plan."[11] Therefore, PacifiCorp should continue to be allowed to utilize its IRP to satisfy any procurement plan filing requirement the Commission adopts consistent with the process already established by the Commission.

C. Issue 3 – Compliance, Reporting and Enforcement

There are a number of questions related to compliance, reporting and enforcement. Foremost for PacifiCorp is the question of how the Commission will analyze procurement during different compliance periods. This question is somewhat compounded as SB 2x has eliminated the requirement that utilities meet annual incremental procurement targets. According to Section 399.15(b)(2)(C): "[r]etail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year." However, utilities must show "reasonable

[11] Section 399.17(d).

progress" towards meeting the goals of 25% by 2016 and 33% by 2020.[12] This is further complicated by the fact that procurement goals are not fixed but are a moving target based on customer demand and resource performance. PacifiCorp provides no specific recommendations at this time, but welcomes the opportunity to work with the Commission and stakeholders to determine how these compliance goals will be determined and satisfied.

PacifiCorp also seeks clarification about how compliance and enforcement will be analyzed. Specifically, PacifiCorp recommends that the Commission allow banking and flexible compliance provisions to apply both within and across the different compliance periods in recognition of the necessary lead-times between initial contracting, construction and commercial operation.

Lastly, PacifiCorp reiterates the fact that any compliance analysis must take into account the fact that PacifiCorp is subject to different RPS requirements. For example, PacifiCorp is not subject to the procurement content requirements applicable to other LSEs and PacifiCorp can utilize different resources than other LSEs to meet its RPS goals. These requirements must be included when determining the reporting formats and when determining compliance towards meeting RPS goals.

D. Issue 4 – Least-Cost Best-Fit

[12] Section 399.15(b)(2)(B).

As described above in Sections III.A.1 and III.A.6, Section 399.17 exempts PacifiCorp from any requirement to utilize a least-cost best-fit bid evaluation methodology. Instead, PacifiCorp can continue to procure on a system-wide basis and utilize its IRP to determine the renewable resource need in which RFPs will be issued instead of an RPS procurement plan.

E. Issue 5 – Implement Section 399.20, as Amended

Although SB 2x modifies Section 399.20 and will result in changes to the standard tariff to be offered by utilities, PacifiCorp reiterates that the Commission should not require PacifiCorp to modify its existing tariff.[13] Section 399.20(c) states that "[t]he commission may modify or adjust the requirements of this section for any electrical corporation with less than 100,000 service connections, as individual circumstances merit." PacifiCorp's current tariff has never been utilized and there is little chance of any additional facilities using the tariff (even if modified). Furthermore, PacifiCorp has a small number of California customers that will bear the costs of any program modifications. Accordingly, PacifiCorp asks that the Commission exercise its explicit statutory discretion to modify the requirements for PacifiCorp and avoid requiring PacifiCorp to modify its tariff at this time.

Not only has PacifiCorp's current tariff never been utilized, but the proposed changes contemplated by SB 2x are unlikely to result in additional facilities seeking to use a revised and expanded tariff. Even with the expanded eligibility size and program cap limitations, the proportionate share of the program cap for PacifiCorp will remain very low. Currently, PacifiCorp's proportionate share of the current 497 megawatt (MW) program cap is 1.013 MW.

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[13] PacifiCorp, as a member of the California Association of Small and Multi-Jurisdictional Utilities (CASMU), which also includes Bear Valley Electric Service, a division of Golden State Water Company (BVES), California Pacific Electric Company, LLC doing business as Liberty Energy – California Pacific Electric Company (CalPeco), and Mountain Utilities (MU), submitted a brief on March 7, 2011 describing why the Commission should avoid requiring PacifiCorp and the other CASMU utilities from implementing a renewable feed-in tariff. The CASMU Brief is available at http://docs.cpuc.ca.gov/efile/BRIEF/132678.pdf.

If the cap is expanded to 750 MW, the proportionate share for PacifiCorp would be approximately 2.026 MW. Therefore, even assuming that facilities would seek to utilize the current or revised tariff, the number of facilities in PacifiCorp's service territory would be extremely limited. The proportionate cap for PacifiCorp is likely to be *exceeded by one facility*. It is uneconomical and burdensome to implement a standardized tariff structure that is not utilized at all or, at best, utilized on a "one-off" basis for very few facilities.

Additionally, PacifiCorp's California peak demand and number of customers are significantly smaller than the demands and customer sizes of California's major utilities, as evidenced by the proportionate shares of the current program cap. Requiring PacifiCorp to adopt a tariff that is identical or even similar to the tariffs required by those large utilities simply does not make sense. These structural differences were considered by the Legislature and recognized when it adopted Section 399.20(c). Based on the different characteristics and smaller size of PacifiCorp, the Commission should refrain from requiring PacifiCorp to modify its existing tariff.

As potential revisions to PacifiCorp's existing tariff are unlikely to result in any facilities utilizing the tariff, PacifiCorp requests that the Commission use its explicit statutory authority to avoid requiring PacifiCorp to revise its tariff. Alternatively, any requirement that PacifiCorp modify its tariff should be deferred until the current proportionate program allocation specified in PacifiCorp's existing tariff is reached. At that point, PacifiCorp could then seek to modify the tariff. This would promote efficiency by ensuring that PacifiCorp would not be required to make any tariff modifications until it became clear that there was additional demand for the tariff. Another option would be that the Commission bifurcate the schedule for implementing Section 399.20 and delay any requirements to modify PacifiCorp's tariff to determine whether any

potential facilities would seek to utilize such a tariff. This revised schedule would also provide the Commission with the opportunity to evaluate modifications of larger utility tariffs and determine what modifications are most effective.

F. Issue 6 – Other Ongoing Implementation and Administration

PacifiCorp reiterates the fact that any ongoing efforts to implement and administer the RPS program must take into account the unique characteristics and requirements applicable to PacifiCorp as California's sole MJU.

IV. Conclusion

PacifiCorp appreciates this opportunity to provide comments on the OIR and looks forward to working with the Commission and stakeholders to refine the RPS program. As described herein, any RPS program modifications must consider the unique characteristics of PacifiCorp as well as the explicit statutory authority that provides for different RPS procurement requirements for an MJU. Accordingly, the Commission cannot adopt a one-size fits all RPS program approach and must recognize that an MJU is not treated identically to all other LSEs.

Dated: May 31, 2011

Respectfully submitted,

/s/

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VERIFICATION

I am the attorney for the respondent corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on May 31, 2011 at Sacramento, California.

/s/

Jedediah J. Gibson