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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA AND THE CALIFORNIA ENERGY COMMISSION

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.	Rulemaking 06-04-009 (Filed April 13, 2006) Energy Commission Docket 07-OIIP-01

REPLY COMMENTS OF PACIFICORP (U 901 E) ON PROPOSED INTERIM OPINION ON GREENHOUSE GAS REGULATORY STRATEGIES

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Date: March 4, 2008

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Pursuant to the *Interim Opinion on Greenhouse Gas Regulatory Strategies* dated February 8, 2008 and Rule 14.3 of the Commission's Rules of Practice and Procedure, PacifiCorp respectfully submits these reply comments on the Proposed Decision ("PD") of President Peevey relating to regulation to be used to reduce greenhouse gas ("GHG") emissions in the electricity sector. PacifiCorp appreciates the opportunity to provide further comments in this proceeding on these important issues.

I. DISCUSSION

PacifiCorp has been an active participant in this proceeding, both before the Commission and the California Energy Commission ("CEC"). PacifiCorp's participation has included the submission of numerous written comments, attendance at countless Commission and CEC workshops, and continued work with both Commission and CEC staff to effectuate a workable approach to GHG emissions regulation for PacifiCorp. In this context, PacifiCorp has reviewed Sierra Pacific's February 28, 2008 comments on the PD. The Commission should continue to rely on the extensive discussion and analysis previously submitted in this proceeding by retaining the "retail provider" approach for multi-jurisdictional utilities ("MJUs"). Concurrently, the Commission should provide MJUs the discretion to petition to be regulated under the "deliverer" approach as individual MJU circumstances dictate.

At the heart of Sierra Pacific's comments is their objection to MJUs being regulated under the "retail provider" approach versus the "deliverer" approach. Under a retail provider point of regulation approach, retail providers are responsible for all of the power they deliver to consumers in California. Under a deliverer point of regulation approach, the entity that first delivers the power to the electricity grid in California is held responsible for the electricity's emissions.

Initially, both approaches appear interchangeable. MJUs are currently responsible for all the power they deliver to consumers in California and are also the entity that first delivers the power to the electricity grid in California. PacifiCorp, however, respectfully disagrees with Sierra Pacific's presumptive and premature position that by adopting the retail provider approach at this time that MJU's will be forever precluded from assigning resources to serve state-specific retail load or having the ability to control the mix of power they use to serve California retail load. PacifiCorp's system cannot currently differentiate kilowatt-hours produced by a combination of utility-owned generating resources and resources providing contracted-for power that are located throughout the Western United States. PacifiCorp treats all of the output from these electricity generating resources as "system" power. PacifiCorp's reliance on system power to serve California retail load necessarily prevents PacifiCorp from supporting a deliverer point of regulation at this time. In this proceeding, Sierra has acknowledged a similar approach.[1]

A second hurdle for an MJU with regard to the deliverer approach is whether an MJU has been granted the regulatory flexibility by its other states to assign system resources exclusively to serve California retail load. In its comments on the reexamination of policies

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[1] In pre-workshop comments in this proceeding, Sierra previously stated:

"3. *Since it is not possible to trace the origin of electricity delivered to California from an MJU's out-of-state resources*, (emphasis added) allowances should be distributed accordingly to the same pro rata share of GHG emissions from the MJU's multi-state system that California load bears to Sierra's system load." *Sierra Pacific Pre-workshop Comments* at 3 (Oct. 31, 2007).

adopted in Decision No. 06-02-032, Sierra Pacific noted the potential for conflict between California and the Public Utility Commission of Nevada ("PUCN"):

> The vast majority of Sierra's load and generating resources are in Nevada ... the PUCN regulates Sierra's resource procurement that serves both Nevada and California load. What the PUCN may authorize, the CPUC may prohibit, or at least penalize Sierra for procuring. Sierra Pacific Comments at 3 (Nov. 16, 2006).

If Sierra Pacific has already obtained the consent of its other state regulatory commission to dedicate resources to serve California load and has the ability to trace the origin of electricity delivered to California from out-of-state resources, it should have the opportunity to petition California to be regulated under the deliverer approach. Unfortunately, PacifiCorp's state commissions have not granted it the discretion to assign system resources to serve California. PacifiCorp also does not have the means to track electricity delivered to California on a resource by resource basis. As such, PacifiCorp currently supports the Commission's recommendation to regulate MJUs using a retail provider point of regulation, including the opportunity to petition for an alternative form of regulation, such as the deliverer approach, should circumstances dictate.

A. A Retail Provider Point of Regulation Approach Offers a Better Regulatory Means to Freely Allocate Allowances and for the Commission to Exercise Greater Oversight of MJUs.

The distinctions between the retail provider and deliverer point of regulation approaches is also critically important when it comes to equity and fairness in meeting GHG emissions requirements, such as allocating free allowances. To the extent PacifiCorp does not enjoy the same flexibility other in-state utilities have in selecting which resources to use to serve California retail load, the retail provider approach allows California to allocate free allowances to MJUs to address this inequity. The allocation of free allowances to MJUs would be proportional to emissions generated from the MJU's system power used to serve California retail load and, accordingly, all free allowances would be used by MJUs to comply with California GHG emissions requirements. Moreover, to the extent these free allowances are allocated to rate regulated utilities, such as PacifiCorp, the Commission would be in a better position under a

retail provider point of regulation approach to ensure that the benefits of free allowances are used to the benefit of PacifiCorp's California customers.

B. The PD's Adoption of the Retail Provider Approach as it Applies to PacifiCorp is Constitutional and Consistent with the Commission's Past Treatment of MJUs.

After reviewing Sierra's comments, it is clear that PacifiCorp's circumstances regarding GHG emissions regulation are different from Sierra Pacific. Given PacifiCorp's current multi-state circumstances, the proposed retail provider point of regulation approach does not constitute discriminatory treatment by the Commission that would burden out-of-state economic interests. The retail provider approach does not place any greater burden on PacifiCorp to report and track its power imported into California than does the deliverer approach. In fact, under today's circumstances, PacifiCorp would be obligated to perform the identical reporting and tracking under either point of regulation approach.

Second, PacifiCorp's current multi-state cost structure and the policies of its various state utility commissions (including California) are the mechanisms that limit PacifiCorp's flexibility to import lower carbon power to serve California load, not the PD's recommended point of regulation for MJUs. The PD merely facilitates the adoption of the retail provider approach without influencing or dictating other state commission policies.

Finally, the potential burdens of the deliverer point of regulation are more acute than the potential burdens under the retail provider approach for MJUs. Specifically, as a result of its multi-state status, PacifiCorp does not enjoy the same flexibility in selecting which resources to use or retire to serve California retail load as do other in-state utilities. As a result, a deliverer point of regulation would create additional burdens on PacifiCorp precisely because of its multi-state status and multi-jurisdictional regulation. The retail provider approach is an attempt by the Commission to develop an alternative compliance mechanism between in-state utilities and MJUs to reduce the excessive burdens of the deliverer approach on MJUs.

C. PacifiCorp Proposes that the PD be Modified to Further Clarify the Issue of MJU Attribution of GHG Emissions.

PacifiCorp respectfully requests that the PD be modified to clarify that under the retail provider point of regulation approach, GHG emissions are attributable to California operations either on: (1) the proportional share of the MJUs electricity retail sales in California to total system retail sales, or (2) in proportion consistent with a multi-state cost allocation methodology utilized by the Commission to set rates. While the two methods are very similar in their effect, the latter would more accurately track with the actual costs of service provided to California consumers.

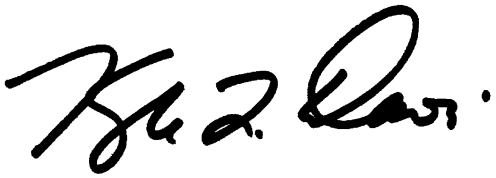
II. CONCLUSION

PacifiCorp appreciates the opportunity to provide reply comments on the PD of President Peevey related to regulation to be used to reduce GHG emissions in the electricity sector. For all the foregoing reasons, PacifiCorp continues to support a retail provider point of regulation approach given its unique circumstances in California. The Commission should continue to rely on the extensive discussion and analysis previously submitted in this proceeding by retaining the "retail provider" approach for MJUs. If in the future, an MJU is able to assign utility-owned generating resources and/or resources providing contracted for power to serve state-specific retail load, and can track the electricity and attribute GHG emissions from those out-of-state resources to California, it should have the right to petition for deliverer status (and a commensurate review of any free allowance allocations). Finally, PacifiCorp requests that the PD clarify that under the retail provider point of regulation approach, GHG emissions are attributable to California operations either on the proportional share of its California electricity retail sales to total system retail sales or in proportion consistent with a multi-state cost allocation methodology utilized by the Commission to set rates.

Dated: March 4, 2008

Respectfully submitted,

By



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I hereby certify that on this 4th day of March, 2008, I caused to be served, a true and correct copy of the foregoing

REPLY COMMENTS OF PACIFICORP (U 901 E) ON PROPOSED INTERIM OPINION ON GREENHOUSE GAS REGULATORY STRATEGIES

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