IN THE COURT OF APPEALS OF THE STATE OF OREGON

NEWSUN ENERGY LLC, a Delaware limited liability company,
Petitioner-Appellant,

v.

OREGON PUBLIC UTILITY COMMISSION, an agency of the State of Oregon,
Respondent-Respondent,

and

PACIFICORP, an Oregon business corporation
Intervenor-Respondent.

Deschutes County Circuit Court
22CV24304

CA No. A182798

BRIEF OF *AMICUS CURIAE* THE GREEN ENERGY INSTITUTE AT LEWIS & CLARK LAW SCHOOL AND SIERRA CLUB

On Appeal from General Judgment entered November 3, 2023, of the Circuit Court for Deschutes County; The Honorable Beth M. Bagley

(Attorney information on next page)

February 2024

ATTORNEY INFORMATION

Alex Houston, OSB #214066
Carra Sahler, OSB #024455
Green Energy Institute at
Lewis & Clark Law School
10101 S. Terwilliger Blvd.
Portland, OR 97219
Tele: (503) 768-6655
Tele: (503) 768-6634
ahouston@lclark.edu
sahler@lclark.edu

Attorneys for Amici Curiae Green Energy Institute at Lewis & Clark Law School and Sierra Club

Casey M. Nokes, OSB #076641
Richard G. Lorenz, OSB #003086
Cable Huston LLP
1455 SW Broadway, Suite 1500
Portland, OR 97201-3412
Tele: (503) 224-3092
cnokes@cablehuston.com
rlorenz@cablehuston.com

Attorneys for Petitioner-Appellant NewSun Energy LLC

Denise G. Fjordbeck, OSB #822578
Oregon Department of Justice
1162 Court St NE
Salem OR 97301
Tele: 503 378-4402
denise.fjordbeck@doj.state.or.us

Attorneys for Respondent Public Utility Commission of Oregon

Jeffrey S. Lovinger, OSB #960147
Dallas Steven DeLuca, OSB #072992
Markowitz Herbold PC
1455 SW Broadway, Suite 1900
Portland OR 97201
Tele: (503) 295-3085
jeffreyLovinger@MarkowitzHerbold.com
dallasdeluca@markowitzherbold.com

Attorneys for Intervenor-Respondent PacifiCorp

INDEX

TABLE OF AUTHORITIES ii

I. INTRODUCTION AND INTEREST OF AMICUS CURIAE 1

II. STATEMENT OF THE CASE 2

III. ASSIGNMENTS OF ERROR 3

IV. ARGUMENT 3

A. Background on IRPs from Amici Perspective 3

B. Integrated Resource Plans are Reviewable Final Orders 6

1. IRP acknowledgement is a final order under Oregon statute and case law 8

2. Whether an IRP complies with Commission requirements is not part of the larger rate case process 12

3. If an IRP acknowledgement is not a final order, participating in the planning process is near-meaningless 15

V. CONCLUSION 18

TABLE OF AUTHORITIES

Cases **Page**

Grobovsky v. Bd. of Med. Examiners,
213 Or App 136, 159 P3d 1245 (2007) 3

Northwest & Intermountain Power Producers Coalition v. Portland Gen. Elec.,
308 Or App 110, 480 P3d 981 (2019) 11

Oregon Restaurant Services v. Oregon State Lottery,
199 Or App 545, 112 P3d 398, *rev den,* 339 Or 406 (2005) 10, 11

Tidewater Contractors, Inc., v. Oregon Bureau of Labor Industries,
151 Or App 293, 948 P2d 750 (1997) 10, 11

Statutes

ORS 183.310(1) 8

ORS 183.310(6)(b) 8, 11, 17

ORS 469A.400–469A.475 9

ORS 756.500–756.558 13

ORS 757.207(1)(a) 13

Rules

OAR 860-001-0300 *et seq.* 13

OAR 860-027-0400 ..... 8, 11

OAR 860-027-0400(2) 13

Commission Orders

In the Matter of PacifiCorp's 2013 Integrated Resource Plan,
Docket No. LC 57, Order No. 14-252 (July 8, 2014) 9

In the Matter of PacifiCorp's 2017 Integrated Resource Plan,
Docket No. LC 67, Order No. 18-138 (Apr. 27, 2018) 6

In the Matter of PacifiCorp's 2019 Integrated Resource Plan,
Docket No. LC 70, Order No. 20-186 (June 8, 2020) 4

In the Matter of PacifiCorp's 2021 Integrated Resource Plan,
Docket No. LC 77, Order No. 22-178 (May 23, 2022) 14

In the Matter of Public Utility Commission of Oregon Investigation Into Integrated Resource Planning,
Docket No. UM 1056, Order No. 07-002 (Jan. 8, 2007) 11, 13

PacifiCorp's 2021 Integrated Resource Plan,
Docket No. 21-035-09 Order (June 2, 2022) 14

Other Authorities

ORAP 5.77(1) 3

OR. DEP'T OF ENERGY, 2022 OREGON BIENNIAL ENERGY REPORT at 528 (2022), https://www.oregon.gov/energy/Data-and Reports/Documents/2022-Biennial-Energy-Report.pdf 4

Or. Publ. Util. Comm., *Energy - Planning*,
https://www.oregon.gov/puc/utilities/pages/energy-planning.aspx
(last visited Feb. 28, 2024) 5

BRIEF OF AMICUS CURIAE

I. INTRODUCTION AND INTEREST OF AMICUS CURIAE

Amicus Curiae Green Energy Institute at Lewis & Clark Law School (GEI) is an organization housed in the law school's Environmental, Natural Resources, and Energy Law Program. Its mission is to develop equitable, comprehensive, effective strategies to prevent catastrophic climate change by furthering the just transition to a sustainable, carbon-free energy grid. GEI's analyses and recommendations aim to hasten the energy transition by strengthening existing policies, eliminating barriers, and promoting innovative strategies to design and help implement just and ambitious energy and climate policies.

In addition to policy development, GEI engages in regulatory proceedings at the Oregon Public Utility Commission (Commission or PUC). Participating in a variety of dockets at the Commission, involving both gas and electric investor owned utilities, GEI works to avoid fossil fuel lock-in, implement equitable decarbonization measures, and encourage a transparent and open process for new participants.

Amicus Curiae Sierra Club is a national nonprofit organization with 67 chapters and over 680,000 members, including over 18,000 members who reside in Oregon. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth and to practicing and promoting the responsible use of the

earth's ecosystems and resources. The Sierra Club's most important current priority is to advance smart, clean energy solutions that address the critical problems of climate change, air pollution, and our nation's dependence on fossil fuels. To that end, Sierra Club is a regular participant before public utility commissions across the country, including the Oregon Public Utility Commission, in both gas and electric utility proceedings. The Sierra Club's interest in this case stems from its active involvement before the Oregon Public Utility Commission in a wide range of dockets, nearly all of which directly impact the equitable and rapid transition to clean energy necessary to avoid the worst impacts of climate change.

GEI and Sierra Club respectfully request that the Court hold that Order No. 22-178 is a "final order" under the Administrative Procedures Act (APA) and that subject matter jurisdiction exists for judicial review.

II. STATEMENT OF THE CASE

GEI and Sierra Club concur with and adopt the Statement of the Case of NewSun.

III. ASSIGNMENTS OF ERROR

GEI and Sierra Club concur with and adopt the Assignment of Error 1 of NewSun. GEI and Sierra Club do not take a position on Assignment of Error 2.[1]

IV. ARGUMENT

GEI and Sierra Club concur with and adopt the Argument of NewSun pertaining to Assignment of Error 1. Consistent with ORAP 5.77(1), this brief does not repeat NewSun's arguments but provides an additional perspective to assist the Court in understanding "the context of the regulatory scheme within which the agency issued the order." *Grobovsky v. Bd. of Med. Examiners*, 213 Or App 136, 143, 159 P3d 1245 (2007).

A. Background on IRPs from Amici Perspective

A utility's Integrated Resource Plan (IRP) provides a critical window into how it will meet the energy needs of its customers, now, and twenty years in the future. The Commission's order at the conclusion of the planning process demonstrates that the agency has carefully evaluated whether, in fact, the utility has followed the Commission's substantive and procedural requirements in producing its IRP. As the Commission itself has stated: "The IRP is a road map for providing reliable and least-cost, least-risk electric service to the utility's

[1] GEI and Sierra Club note that should the Court rule in NewSun's favor on Assignment of Error 1, the issues raised in Assignment of Error 2 should be heard before the trial court.

customers, consistent with state and federal energy policies, while addressing and planning for uncertainties." *In the Matter of PacifiCorp's 2019 Integrated Resource Plan,* Docket No. LC 70, Order No. 20-186 at *3 (June 8, 2020). The IRP does not grant the utility cost recovery for its investments. Nevertheless, the Commission's acknowledgment of an IRP provides the utility with significant certainty that its "action plan," or the immediate activities that the utility will take in the next two to four years to implement the IRP, will ultimately be found prudent and approved for cost recovery.

This regulated planning process began in Oregon in response to the Washington Public Power Supply System's (WPPSS) financial and planning disasters of the 1970s and 1980s—making Oregon one of the first states to require an IRP.[2] At that time, the planning process focused on whether a utility intended to build and invest *too much*. The Commission could then appropriately exercise its authority to address the prudence of those investments in a subsequent rate case based, in part, on the utility's planning effort. Now, however, the focus of the IRP is *also* on whether a utility is building and investing *enough* in order to ensure that

[2] The project, which planned for the construction and operation of four nuclear power plants, was ultimately scrapped and resulted in one of the largest bond defaults in United States' history. OR. DEP'T OF ENERGY, 2022 OREGON BIENNIAL ENERGY REPORT at 528 (2022), https://www.oregon.gov/energy/Data-and-Reports/Documents/2022-Biennial-Energy-Report.pdf

Oregon decreases its greenhouse gas emissions[3] and that the utility is acting as ambitiously as possible in a cost-effective manner. Today's IRP (and the Commission's response to it) often reveals utility or regulatory *inaction*, which is not something that is often or easily addressed in a rate case.

Not only has the purpose of IRPs changed, but the process, length, information, and participants have changed. As the Oregon Commission website explains, "[w]hat began thirty years ago as a simple report by each utility has grown into a large, stakeholder-driven process that results in a comprehensive and strategic document that drives utility investments, programs, and activities."[4] Indeed, stakeholder engagement has played a critical role in forcing utilities, including PacifiCorp, to closely examine their continued reliance on fossil fuels, a role that will become even more critical as the utilities decarbonize their operations in order to comply with HB 2021. For instance, it was at stakeholders' urging that, in 2018, spurred the Commission requirement that PacifiCorp analyze coal retirements as a resource option. *See In the Matter of PacifiCorp's 2017 Integrated*

---

[3] In June 2021, the 81st Oregon Legislative Assembly passed House Bill 2021 (HB 2021), a clean-energy law that requires Oregon's regulated retail electricity providers to eliminate 100% of their greenhouse gas emissions by 2040. The Commission is charged with implementing and enforcing this law. Because the requirements of HB 2021 focus on the regulated utilities' acquisition of clean energy resources, the critical path for enforcement lies in the Commission's review of the utilities' IRP processes.

[4] Or. Publ. Util. Comm., *Energy - Planning*, https://www.oregon.gov/puc/utilities/pages/energy-planning.aspx (last visited Feb. 28, 2024).

Resource Plan, Docket No. LC 67, Order No. 18-138 (Apr. 27, 2018). The importance of this process, both in engaging stakeholders and in planning future utility action, underscores the need for reviewability of utility IRPs and the associated Commission orders.

The Court's determination that the Commission's IRP acknowledgement order is final will resolve larger questions about separation of powers, assure reviewability of agency actions that affect how Oregon addresses climate change, and deliver on promises of accessibility and meaningfulness of participation in agency proceedings. A contrary conclusion will relegate stakeholders, advocates, and individuals to participating in less meaningful processes that ultimately produce unreviewable and unenforceable results, potentially depriving stakeholders of a remedy in the face of a violation of the law.

B. Integrated Resource Plans are Reviewable Final Orders.

Amici dispute any characterization that all utility proceedings at the Commission result in only one final order in a rate case, which comes only at the very end of years long engagement. An Integrated Resource Plan, a Request for Proposal (RFP), and a rate case are *not* three phases of a single process culminating in a single final order at the conclusion of the rate case. To the contrary: each determination in each one of these phases produces a final order necessary to

satisfy one of the Commission's separate regulatory requirements under Oregon statutes and rules.

This brief focuses on the importance of the IRP acknowledgement order. A utility may view an IRP acknowledgement order as part of one monolithic process culminating in a final order in a rate case because an investor-owned utility has the ultimate goal of maximizing rates and hence profit. But Amici are concerned with whether the utility has complied with the substantive and procedural requirements in each of the processes. In fact, each process serves its own purpose, involving different stakeholders, different regulatory requirements, and resulting in different outcomes.

As discussed below, a Commission decision to acknowledge an IRP is an appealable final order under both Oregon statute and case law. IRP acknowledgement by the Commission serves as the final determination that the plan complies with Oregon rules, and is not revisited in the rate case. Because the Commission never revisits its order finding that a utility's IRP meets the agency's criteria, an IRP acknowledgement order is not part of the larger continuum of a rate case. Instead, it constitutes a final order subject to judicial review. Finally, if the IRP acknowledgement is not a final order and, thus, not reviewable until the conclusion of a rate case, taking place at some indeterminate number of years in the future, it renders not only the Commission's IRP guidelines ineffective, but it

makes the robust public engagement and stakeholder involvement in the IRP process meaningless.

1. IRP acknowledgement is a final order under Oregon statute and case law.

Under Oregon statute, the Commission's process for acknowledgement of an IRP constitutes a "final order" subject to judicial review. ORS 183.310(6)(b) defines a "final order" as "a final agency action expressed in writing." Final orders do not include "any tentative or preliminary agency declaration or statement that: (A) Precedes final agency action; or (B) does not preclude further agency consideration of the subject matter of the statement or declaration." ORS 183.310(6)(b).

These conditions are satisfied by Commission IRP acknowledgement. The Commission is an "agency" as defined in ORS 183.310(1), as a body "authorized by law to make rules or issue orders." Additionally, acknowledgment of an IRP is expressed in a written Commission order and, upon acknowledgement, the IRP is deemed to contain the information necessary for the utility to proceed in compliance with Commission guidelines; it is not subject to further review or reconsideration. Indeed, any Commission-directed revisions must take place prior to the acknowledgement order, in the IRP Update, or in the next IRP. OAR 860-

027-0400. In other words, an acknowledgement order is final for purposes of ORS 183.310.

An IRP acknowledgment order does not share the indicia of what ORS 183.310 describes as a "tentative" or "preliminary" agency declaration. While an IRP acknowledgment order does not determine the prudency of future utility actions (as will be determined in a rate case), that issue *is not before the Commission* in an IRP proceeding. Rather, in an IRP proceeding, the Commission must evaluate whether the utility has complied with the Commission's IRP guidelines, a set of procedural requirements necessary for IRP acknowledgment, and, when a Clean Energy Plan is filed with an IRP, whether the utility has complied with the procedural requirements for a Clean Energy Plan under HB 2021. ORS 469A.400–469A.475. Commission acknowledgement is not, then, a step preceding a final agency action; it is the culmination of the planning process and the final determination as to whether the IRP is compliant with Commission rules.

Furthermore, IRP acknowledgment provides assurances to the utility that the Commission finds its resource plans reasonable, including actions that must be taken to carry out those plans. *See, e.g., In the Matter of PacifiCorp's 2013 Integrated Resource Plan*, Docket No. LC 57, Order No. 14-252 at *1 (July 8, 2014) (explaining that the Commission will use an acknowledged IRP to evaluate

the prudency of resource investments, considering consistency between the utility's spending and the utility's IRP). In practice, this effectively shifts the burden of proof in a rate case from the utility to challenging parties. Once the utility demonstrates that its costs were incurred in alignment with an acknowledged IRP, it becomes intervening parties' burden to demonstrate that the utilities' proposed costs are nevertheless unfair, unjust, and unreasonable. This is despite intervening parties having far less access to information than the utility pertaining to its business operations and decision-making. The IRP acknowledgement and the benefit that the acknowledgment provides to the utility is not revisited at a later stage, whether in a rate case or in any other docket, and thus cannot be challenged except by appealing an IRP order.

Concluding that an IRP acknowledgement order is a final order is further consistent with Oregon case law evaluating what constitutes a final order. Central to this body of law is whether consequences flow from the purported final action by the agency. For example, in *Oregon Restaurant Services v. Oregon State Lottery*, the Oregon Court of Appeals found that agency letters advising petitioners of regulatory violations of Oregon's lottery rules were not final orders where letters were only the "initial step" in the compliance process and further agency action was required. 199 Or App 545, 556–57, 112 P3d 398, *rev den,* 339 Or 406 (2005). Similarly, in *Tidewater Contractors, Inc., v. Oregon Bureau of Labor*

Industries, the Court concluded that an agency letter informing a contractor of an obligation to pay prevailing wage rate for a particular job was not a final order because it was not a final determination of the contractor's obligation and did not preclude further action to enforce the law. 151 Or App 293, 298–99, 948 P2d 750 (1997).

The Commission's IRP acknowledgment stands in contrast to the kinds of agency actions Oregon courts have found to be non-final for the purposes of ORS 183.310(b)(6). Unlike *Oregon Restaurant Services* and *Tidewater Contractors*, which addressed preliminary agency actions that constituted precursors to later enforcement, the Commission's acknowledgement of an IRP is the final conclusion as to whether the plan meets the conditions specified in the Commission's guidelines, contained in a series of Orders and imposed on the utilities by rule. OAR 860-027-0400 (utility's IRP must satisfy Commission Order Nos. 07-002, 07-047, and 08-339); *see also Northwest & Intermountain Power Producers Coalition v. Portland Gen. Elec.*, 308 Or App 110, 117, 480 P3d 981 (2019) ("having promulgated administrative rules, an agency must follow them"). There is no later stage at which these issues are reevaluated, and whether the IRP satisfied the Commission's guidelines or not is not revisited during a rate case. Under the plain text of the statute and Oregon case law, IRP acknowledgement is an appealable final order.

2. Whether an IRP complies with Commission requirements is not part of the larger rate case process.

The IRP operates as its own administrative proceeding and is *not* a phase of the larger rate case process. Utility IRPs are evaluated by the Commission in their own dockets, subject to distinct Commission guidelines, generate their own administrative record, and attract a wide range of stakeholder participants. The IRP has its own service list and the participants to that process are not automatically made party to any potential later rate case that may or may not be filed. Upon the conclusion of the IRP process, the Commission issues a final written decision determining whether the IRP sufficiently satisfied the relevant guidelines for acknowledgement. This conclusion will never be revisited by the Commission in a future decision, in the form of a rate case or otherwise. Further, the path from IRP to rate case is not linear. There is often an IRP and a rate case open at the same time, and one IRP does not necessarily flow into one rate case as there could be even *two or three IRP cycles before the utility files for a rate increase*. IRPs are required to be filed at least once every two years, but general rate cases are filed at the discretion of the utility whenever the utility seeks to add more resources to its rate base and/or otherwise increase its rates. As such, the IRP acknowledgment proceeding is the sole opportunity for judicial review of whether the utility's plans complied with the relevant regulatory requirements.

Whether the utility complies with the guidelines is an important issue for stakeholders. Specifically, the guidelines include a requirement that the plan "must be consistent with the long-run public interest as expressed in Oregon and federal energy policies," and that the public must be able to meaningfully participate, including "opportunities to contribute information and ideas, as well as to receive information." *In the Matter of Public Utility Commission of Oregon Investigation Into Integrated Resource Planning,* Docket No. UM 1056, Order No. 07-002 (Jan. 8, 2007) (imposed on the utility via OAR 860-027-0400(2)). Indeed, when the Commission issues an order acknowledging an IRP, it is affirming that the utility has fulfilled all of these requirements pursuant to OAR 860-027-0400(2) (which references compliance with Order No. 07-022). Under this framework, IRP acknowledgement is an entirely distinct and separate administrative process from a rate case.

Oregon law supports the conclusion that the rate case is a distinct proceeding entirely divorced from the question of IRP acknowledgement. Under ORS 757.207(1)(a), the central question at issue in a rate case is whether the utility's rates are "fair, just, and reasonable." This process is conducted in its own contested case proceeding, and the Commission's decision is rooted in the evidentiary record developed during the process. ORS 756.500–756.558; ORS 183.310 *et seq*.; OAR 860-001-0300 *et seq*. Importantly, even where the utility's IRP is admitted as

evidence in the rate case, the adequacy of the IRP and the Commission's previous acknowledgment decision is not subject to reopening during the rate case. The only issue pertaining to the IRP is whether facts and circumstances changed to such a degree that the utility should have known that continuing to follow its IRP plan, despite Commission acknowledgment, was not in the best interest of ratepayers, not whether the IRP should or should not have been acknowledged in the first place.

Other Western public utility commissions agree that IRP orders are final and subject to appeal. For instance, the Utah Public Service Commission issued a final order rejecting PacifiCorp's IRP in 2021 for failure to comply with the state's procedural guidelines. *PacifiCorp's 2021 Integrated Resource Plan,* Docket No. 21-035-09 Order at *16 (June 2, 2022) There, the Commission's order explicitly recognized that the order was subject to judicial review in state court, stating "[j]udicial review of the PSC's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action." *Id.* at 19.

Further, in the acknowledgement order at issue here, the Oregon PUC itself recognized that an IRP is different from ratemaking. It noted, "[o]ur IRP guidelines provide procedural and substantive requirements for utilities to meet in developing their IRPs" and "[o]ur decision to acknowledge or not acknowledge an action item

does not constitute ratemaking." *In the Matter of PacifiCorp's 2021 Integrated Resource Plan*, Docket No. LC 77, Order No. 22-178 at *4 (May 23, 2022). The subject matter of IRP acknowledgment, even from the Commission's perspective, focuses on whether the IRP contains *all* the information required by regulation and whether it was conducted in compliance with the PUC guidelines. It is not an interim step in the larger continuum of a rate case.

3. If an IRP acknowledgement is not a final order, participating in the planning process is near-meaningless.

The Commission and PacifiCorp's contention that IRP orders are not final creates deeply problematic implications for stakeholder involvement and enforcement of the utility regulatory process. Simply put, if IRP orders are not reviewable, there is no possibility of meaningful oversight as to whether the plans are created according to the guidelines and other requirements put forth by the Commission. Once an IRP is acknowledged, there is no path for the Commission or stakeholders to review or evaluate the IRP. The Commission can *never again* consider whether that IRP was created in the manner it should have been, including whether it provided meaningful public participation and whether it aligns with Oregon and federal energy policy.

These potential procedural violations could well result in utility actions that do not further Oregon's climate policies, which cannot be rectified or meaningfully

addressed in a rate case for at least two reasons. First, rate cases are filed at the discretion of the utility, after the utility's action (or inactions) have been taken. As a result, they are inherently backwards looking: the Commission must determine whether the inclusion of costs into rates that have *already been incurred* will be fair, just, and reasonable. If the Commission determines that any costs are not fair, just, or reasonable, the only recourse is to not allow cost recovery. Under this framework, then, utilities could see, at most, their resource costs deemed unrecoverable from ratepayers, requiring those costs be assessed to shareholders. While this result protects ratepayers' economic interests, it does nothing to ensure that utilities decarbonize their systems in compliance with Oregon's emission reduction targets or provides the community benefits required under HB 2021. Simply put, by the time ratemaking occurs, which is often years after the IRP is or is not acknowledged, it will be too late to ensure that the utility has complied with HB 2021 and the Commission's guidelines.

Second, rate cases are extremely difficult forums to evaluate whether the utility should have taken a different course of action than it did. This inquiry requires looking back at what the utility knew or should have known at the time it made its resource decision and evaluating whether a different course of action would have been less costly or lower risk. As a result, parties challenging a utility's decision making must demonstrate that "the road not taken" would have

better served ratepayers' interests. And, again, even if this showing is made, it is not possible to "turn back the clock."

Should this Court embrace the view of PacifiCorp and the Commission, it would foreclose any ability for the public to challenge whether the creation and content of an IRP was sufficient under Commission guidelines and Oregon Administrative Rules, which, as demonstrated above, is the only opportunity for stakeholders to meaningfully influence whether the utility will affirmatively take actions in furtherance of Oregon's climate policies. Community-based, climate and environmental justice organizations and individuals participate in the long process of forming IRPs with the expectation that the process will lead to meaningful evaluation of whether the utility has met the requirements of Oregon law, including compliance with Oregon energy policy and environmental standards. That valuable and intentional participation is relegated to meaningless process under PacifiCorp and the Commission's position, for even if the utility fails to comply with Oregon law and the Commission fails to require changes, active stakeholders would have no meaningful recourse. Because the subject matter of Commission IRP acknowledgment is the sufficiency of the IRP, which will never be considered again, both Oregon law and necessary public policy demonstrate that it is a final order under ORS 183.310(6)(b).

V. CONCLUSION

For the foregoing reasons, the Court should reverse the General Judgment and remand this case to the trial court for further proceedings.

COMBINED CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS, AND CERTIFICATES OF FILING AND SERVICE

Brief length

I certify that this brief complies with the word-count limitation as described in ORAP 5.05. The word count is 3,875 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes.

Filing

I certify that I electronically filed with the Oregon State Court Administrator, Appellate Records Section, on this date by using the appellate court eFiling System.

Service

I certify that service of a copy of this brief will be accomplished on the following participants in this case, who are registered users of the appellate court eFiling system, by the appellate courts' eFiling system at the participants' email addresses as recorded this date in the appellate eFiling system:

(Attorney information on next page)

Casey M. Nokes, OSB #076641
Richard G. Lorenz, OSB #003086
Cable Huston LLP
1455 SW Broadway, Suite 1500
Portland, OR 97201-3412
Tele: (503) 224-3092
cnokes@cablehuston.com
rlorenz@cablehuston.com

Attorneys for Petitioner-Appellant NewSun Energy LLC

Denise G. Fjordbeck, OSB #822578
Oregon Department of Justice
1162 Court St NE
Salem OR 97301
Tele: 503 378-4402
denise.fjordbeck@doj.state.or.us

Attorneys for Respondent Public Utility Commission of Oregon

Jeffrey S. Lovinger, OSB #960147
Dallas Steven DeLuca, OSB #072992
Markowitz Herbold PC
1455 SW Broadway, Suite 1900
Portland OR 97201
Tele: (503) 295-3085
jeffreyLovinger@MarkowitzHerbold.com
dallasdeluca@markowitzherbold.com

Attorneys for Intervenor-Respondent PacifiCorp

DATED: February 29, 2024.

/s/*Alex Houston*
Alex Houston, OSB #214066
Green Energy Institute at
Lewis & Clark Law School
10101 S. Terwilliger Blvd.
Portland, OR 97219
Tele: (503) 768-6655
ahouston@lclark.edu

/s/*Carra Sahler*
Carra Sahler, OSB #024455
Green Energy Institute at
Lewis & Clark Law School
10101 S. Terwilliger Blvd.
Portland, OR 97219
Tele: (503) 768-6634
sahler@lclark.edu

Attorneys for Amici Curiae Green Energy Institute at Lewis & Clark Law School and Sierra Club