BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1794

In the Matter of PACIFICORP, dba PACIFIC POWER, Investigation Into Schedule 37 – Avoided Cost Purchases from Qualifying Facilities of 10,000 kw or Less	)	REPLY TO PACIFICORP RESPONSE TO RENEWABLE ENERGY COALITION'S MOTION TO COMPEL DISCOVERY

I. INTRODUCTION

The Renewable Energy Coalition (the "Coalition") files this reply to PacifiCorp's response to the Coalition's motion to compel discovery ("Motion"), requesting that the Oregon Public Utility Commission (the "Commission" or "OPUC") Administrative Law Judge ("ALJ") Allan Arlow compel PacifiCorp to provide full and complete answers to Coalition DRs 1.2, 1.3, and 1.4.

PacifiCorp's response argues that: 1) the Coalition's requests are both too late and too early; 2) the Coalition asks for both too much and too little; and 3) it is not required to provide either additional models runs or meaningful access to the models. The Coalition counters that PacifiCorp has distorted the Commission's direction from the preceding dockets by characterizing this proceeding as being so narrow as to preclude any substantive review of the Company's proposed rates and is unreasonably refusing to work with the Coalition. PacifiCorp's position, as outlined in its response, is contrary to the rules of discovery, fundamental fairness, and the Commission's express direction to allow vetting of these issues in Order No. 16-307.

II. BACKGROUND

After acknowledging and responding to due process concerns raised regarding PacifiCorp's proposed avoided cost rates, the Commission directed the parties to participate in an expedited proceeding "to allow a more thorough vetting of the issues raised in this proceeding and possible revision to Schedule 37 avoided cost prices on a prospective basis."[1] The Commission had the opportunity to simply approve or reject PacifiCorp's avoided cost rates, but decided to provide the Coalition and other parties an opportunity to litigate the issues raised in a contested case proceeding with full discovery rights instead.

The relevant data and assumptions used to calculate PacifiCorp's current avoided cost rates are from the Company's 2015 IRP. As such, the Coalition requested PacifiCorp supplement its 2015 IRP data with additional model runs using different inputs and assumptions.[2] In addition, the Coalition also requested access to PacifiCorp's IRP System Optimizer model ("SO model") and the Planning and Risk ("PaR") model.[3] PacifiCorp has refused to provide the information and access requested. The Coalition filed a motion seeking to compel PacifiCorp to respond to specific data requests on October 31, 2016. PacifiCorp filed its response on November 7, 2016.[4]

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1 Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible QFs, Docket No. UM 1729(1), Order No. 16-307 at 1 (Aug. 18, 2016).

2 Motion to Compel, Attachment A at 8-9 (Coalition DR 1.2 and 1.3).

3 Motion to Compel, Attachment A at 10 (Coalition DR 1.4).

4 Testimony in this case is currently due November 18, 2016. PacifiCorp and the Coalition are in dispute about other data requests that the Company has not answered. Given the numerous discovery disputes, the Coalition plans to file a motion for extension of time to file testimony next week.

III. ARGUMENT

PacifiCorp's response attempts to frame the issues in this expedited process to only one narrow issue, whether the Company's filing complies with what it calls "the Commission-approved process," which completely distorts the actual Commission-approved process, and ignores **why** the Commission directed this contested case proceeding. PacifiCorp's response incorrectly assumes that the Commission directed the parties to determine only whether its avoided cost rates accurately reflect the data and assumptions that the Company unilaterally selected to use in its 2015 IRP. Thus, PacifiCorp claims that additional model runs requested by the Coalition are not relevant by stating that the **results** of these model runs will not be relevant.

But, this argument is contrary to the Commission's direction because the fundamental issue is whether the inputs, assumptions, and model outputs that were used in the 2015 IRP to calculate the rates are themselves reasonable. The Commission has set current rates using a renewable rate deficiency period different from the acknowledged 2015 IRP, and PacifiCorp has proposed that certain 2015 IRP assumptions should be replaced with its 2015 IRP Update. The Coalition is simply proposing that other assumptions be changed to be more accurate as well. The additional model runs are relevant because they are reasonably likely to demonstrate that PacifiCorp's estimates during its 2015 IRP resulted in inaccurate avoided cost rates.

By misapplying the legal standard for relevance, PacifiCorp effectively concedes that the information requested by the Coalition is relevant, and instead insists that the request is unduly burdensome under OAR 860-001-0500(4). PacifiCorp seems to argue that it is too busy working on its 2017 IRP to comply with the Coalition's discovery

request. PacifiCorp fails to note that if it had used the Coalition's assumptions in the 2015 IRP, then there might not need to be any additional model runs in this case.

PacifiCorp also contradicts its unduly burdensome argument by simultaneously maintaining that the Coalition's requests are too narrow and "cherry-pick" certain updates while leaving other information stale. PacifiCorp offers several complaints about producing the results of these model runs, but these complaints do not excuse PacifiCorp from participating in the discovery process or withholding discovery materials.

Moreover, PacifiCorp has refused the Coalition's efforts to compromise on the scope of model runs requested. In fact, PacifiCorp has made **zero effort** to narrowly tailor the number of model runs. In short, PacifiCorp should not be permitted to unilaterally determine whether the results of the model runs would be relevant by exaggerating the amount of time it might take to produce them.

Finally, it is hardly equitable to require the Coalition and other small QFs to pay tens of thousands of dollars for access to PacifiCorp's models and the privilege of being able to understand what PacifiCorp's avoided cost rates would be if different inputs and assumptions were used. The Commission already requires that large QFs be able to access free of charge and outside of the Company's offices the computer model used to set their rates. Providing small QFs access to PacifiCorp's SO Model and PaR models, which PacifiCorp uses to calculate standard avoided costs, is in line with the Commission's determination that PacifiCorp must provide large QFs access to the GRID model, which is used to calculate PacifiCorp's non-standard avoided cost prices.

1. PacifiCorp Distorts the Scope of This Proceeding

PacifiCorp's view of this case is that all Staff and other parties are permitted to do is review whether the avoided cost rate filing is consistent with its acknowledged IRP. This view ignores the step where parties determine **whether** the assumptions and inputs in the Company's self-selected preferred portfolio in its IRP are actually accurate. If the avoided cost filing review were limited to determining whether PacifiCorp's filing is consistent with its IRP, then there would be no need for any further or additional process, as directed by the Commission. Under PacifiCorp's view of this proceeding, it gets to unilaterally set avoided cost rates without **ever** providing the parties with due process rights to challenge its inputs and assumptions and obtain Commission resolution. PacifiCorp's response seems to equate filing comments during the IRP process, which PacifiCorp is free to ignore, with actually vetting the inputs and assumptions before the Commission and permitting the Commission the opportunity to determine whether PacifiCorp's estimates are reasonable.

In reality, the Commission-established process for setting avoided cost rates permits the parties to challenge the assumptions and inputs used in an IRP. So, if the Commission elects to suspend an avoided cost rate filing, as it has done in the instant case, then interested parties can challenge all of the inputs, assumptions, and outputs from the Company's models to determine their reasonableness and accuracy. The inputs and assumptions are things like the utility's assumed costs of a new renewable or gas plant and natural gas price forecasts, and dates of compliance with Renewable Portfolio

Standards or of their next major resource acquisition.[5] PacifiCorp's inputs and assumptions have been called into question by events that took place both prior to and after its IRP and should not be relied upon to set avoided cost prices until PacifiCorp's next IPR has concluded.

PacifiCorp's response points out that the Commission has determined that the underlying methodologies for how it sets avoided cost rates are determined in generic proceedings, and cannot be challenged when reviewing an avoided cost rate filing.[6] But, this simply means that the Commission does not permit the parties to challenge, for example, its policy for setting avoided cost rates differently during the resource sufficiency period (based on market prices without capacity payments) then during resource deficiency period (based on either a renewable or thermal resource).

Through these discovery requests, the Coalition is not challenging the Commission's underlying methodology (using different prices during resource sufficiency and deficiency periods), but is instead claiming that the inputs and

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5 Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 36-37 (May 13, 2005); Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 06-538 at 44 (Sept. 20, 2006); Re Investigation into determination of resource sufficiency, pursuant to Order No. 06-538, Docket No. UM 1396, Order No. 10-488 at 8 (Dec. 22, 2010); Re Investigation to Determine if Pacific Power's Rate Revision is Consistent With the Methodologies and Calculations Required by Order No. 05-584, Docket No. UM 1442, Order 09-506 at 5 (Dec. 28, 2009) (a party can raise "a substantive issue regarding the accuracy of the updated rates").

6 Re Investigation to Determine if Pacific Power's Rate Revision is Consistent With the Methodologies and Calculations Required by Order No. 05-584, Docket No. UM 1442, Order No. 09-506 (Dec. 28, 2009); Re Investigation to Determine if Pacific Power's Rate Revision is Consistent With the Methodologies and Calculations Required by Order No. 05-584, Docket No. UM 1442, Order No. 09-427 (Oct. 28, 2009). As a matter of law, the Coalition disagrees with the holdings in these orders and believes that it must all aspects of the avoided cost rates to determine their legality, but the Coalition's discovery requests at issue are based on the assumption that the Commission will continue this policy.

assumptions PacifiCorp used to determine its dates are wrong which results in inaccurate dates of sufficiency and deficiency (2028). Hence, the inputs and assumptions need to be vetted with additional modeling to determine what the resource sufficiency/deficiency demarcation would be if more accurate inputs and assumptions were used.

Moreover, the Commission has already agreed, at least on an interim basis, that PacifiCorp's avoided cost filing is incorrect. PacifiCorp's avoided cost rates included a renewable resource sufficiency/deficiency demarcation that was longer than 20 years.[7] The Commission raised serious concerns with that proposal,[8] and ultimately concluded that the interim rates should include a 2028 date based on the understanding that the Company's banked renewable energy certificates would reach zero by then.[9] And the Commission has already determined that the Company's avoided cost filing, which was based on the acknowledged 2015 IRP, was inaccurate because it did not account for the increased RPS requirements resulting from SB 1547.

PacifiCorp's own testimony is inconsistent with its arguments in its response because it has proposed avoided cost rates based on inputs and assumptions different from its acknowledged 2015 IRP. PacifiCorp proposes to use inputs and assumptions

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7 Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729(1), Public Meeting at 1:20:20 (Aug. 16, 2016) ("20-never").

8 Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible QFs, Docket No. UM 1729(1), Order No. 16-117 at 1 (Mar. 23, 2016); see also Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible QFs, Docket No. UM 1729(1), Public Meeting at 1:03:45 (Mar. 22, 2016).

9 Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible QFs, Docket No. UM 1729(1), Order No. 16-307 at 1 (Aug. 18, 2016); see also Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible QFs, Docket No. UM 1729(1), Public Meeting at 39:00 (Aug. 16, 2016).

from its 2015 IRP Update to set rates and a 2028 date for the renewable resource deficiency demarcation, both of which are inconsistent with the 2015 acknowledged IRP.[10] PacifiCorp has already "cherry picked" which aspects of the 2015 acknowledged IRP should and should not be used to set avoided cost rates. The Coalition should be allowed to pick its own cherries and select what it believes are more reasonable inputs and assumptions.

The Coalition and other parties raised these and other issues arguing that the inputs and assumptions from the acknowledged 2015 are inaccurate.[11] After hearing the Coalition's arguments, the Commission then opened "this proceeding to allow a more thorough vetting of the issues raised in this proceeding," including the issues raised by the Coalition. In short, the Commission directed parties to vet these prices and now is the time to do so.

2. This is the Proper Forum for Additional Model Runs to Vet the 2015 IRP

PacifiCorp's response maintains that the Coalition is too late to influence model runs in the 2015 IRP and too early to participate in the 2017 IRP. This is consistent with PacifiCorp's view that the Coalition should constrain its review to determining whether its rates are consistent with its IRP rather than determining whether its rates are actually accurate. But, PacifiCorp is incorrect. PacifiCorp's 2015 IRP model runs (not its 2017 IRP model runs) have been used to calculate its current avoided cost rates. Thus, the 2015 IRP data is within the scope of this proceeding. In light of the Commission's direction in Order No. 16-307, the Coalition finds it difficult to understand how

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10 PAC/100, Dickman/7-8.

11 Re PacifiCorp, dba Pacific Power, 2015 IRP, Docket No. LC 62, Coalition Final Comments at 1-6 (Oct. 15, 2016).

PacifiCorp proposes to vet its avoided cost filing without providing the parties an opportunity to challenge the data and assumptions made in its 2015 IRP. In addition, it is simply unreasonable for PacifiCorp to be allowed to choose its own different inputs and assumptions, but effectively bar the Coalition from selecting its own inputs and assumptions by refusing to provide model runs that it routinely performs in its IRP, or imposing onerous transactional costs to use the model on its own.

PacifiCorp's response mischaracterizes its 2015 IRP process by ignoring the larger context and specific procedural due process problems that led to this contested case proceeding. The Commission has repeatedly encouraged parties to challenge incorrect inputs and assumptions used in an IRP proceeding.[12]

PacifiCorp's argument that it has complied with the Commission's IRP process, should not suggest that this process has adequately vet PacifiCorp's avoided cost prices. PacifiCorp selects all the inputs and assumptions during its IRP process, and they are not thoroughly vetted, because the IRP is not a contested case. Parties are free to raise whatever arguments they like in IRP comments and PacifiCorp is free to ignore them. This is demonstrated by the Commission's March 1, 2016 decision declining to approve PacifiCorp's avoided cost price update, based on Staff's recommendation to allow additional time to verify the 2015 IRP inputs, including the impact of the passage of SB 1547.[13] The Commission again directed the parties to specifically address the need to vet

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12 See supra note 5.

13 Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible QFs, Docket No. UM 1729(1), Order No. 16-117 at Appendix A at 5 (Mar. 23, 2016).

the 2015 IRP data and assumptions in Order No. 16-307, including the concerns raised by the Coalition and which form the basis of its discovery requests.[14]

In sum, PacifiCorp is mistaken in arguing that this is not the proper forum to perform additional model runs, because the Commission has provided this process with the express purpose of evaluating its avoided cost rates, which necessarily includes vetting the 2015 IRP data supporting the current rates. PacifiCorp's avoided cost rates and its testimony rely on assumptions made in its acknowledged 2015 IRP, and that data is within the scope of this proceeding. PacifiCorp should not be permitted to manipulate the expedited nature of this proceeding to avoid producing relevant discovery materials.

3. The Coalition Has Offered to Reduce the Number of Model Runs

PacifiCorp's response makes two contradictory arguments on the number of model runs: 1) that the Coalition is asking for too much, and 2) that the Coalition is asking for too little by "cherry picking" data. First, the Coalition submits that additional model runs could have a high degree of relevance to PacifiCorp's current avoided rate whether PacifiCorp runs 100 new scenarios or only one. As the Coalition does not have access to the models, it cannot credibly refute how long it would take PacifiCorp to run the models it desired, but there can be no question that it would not take nearly as long if the Company worked with the Coalition to reduce the number runs requested.

The Coalition's data requests were narrowly tailored to identify the specific inputs and assumptions that the Coalition believes are inaccurate. For example, the Coalition's comments during the 2015 IRP argued that PacifiCorp's plans to continue to operate its

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[14] Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible QFs, Docket No. UM 1729(1), Order No. 16-307 at Appendix A at 2 (Aug. 18, 2016).

coal plants were inaccurate and that the Company would shut down more coal plants.[15] The Coalition's view on this particular assumption has turned out to be accurate, as PacifiCorp has since announced it will shut down two additional coal plants (Naughton 3 with 330 MW and Cholla 4 with 387 MW).[16] Yet, PacifiCorp's current avoided cost rates still assume operation of all of its existing coal plants.

It is for the Commission, rather than PacifiCorp, to decide whether the Coalition's arguments, like its argument that PacifiCorp's current avoided cost rates should assume the Company will retire coal plants (as the Company is actually planning to do), are a reasonable approach to setting PacifiCorp's avoided cost rates. One way to vet this issue is to determine, through use of PacifiCorp's IRP models, whether additional coal plant retirements and other changes will result in a new date upon which PacifiCorp plans to build or buy new generation. Thus, the Coalition is not "cherry picking" data, but rather attempting to do a "thorough vetting" of the exact issues that the Coalition raised in this proceeding.[17]

Upon receipt of PacifiCorp's objection, the Coalition offered to narrow and limit the amount of models runs requested and PacifiCorp has refused to compromise on this respect. PacifiCorp should not be permitted to argue discovery is unduly burdensome without attempting to reduce that burden with the requesting party. PacifiCorp cannot credibly refuse to do 100 additional model runs knowing that the Coalition is willing to

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15 See e.g., Coalition DR 1.2 (asking PacifiCorp to update Table 8.1 from its IRP to include the increased RPS requirements in SB 1547 and the retirements of Naughton 3 in 2018 and Cholla 4 in 2025).

16 Re PacifiCorp, dba Pacific Power, 2015 IRP, Docket No. LC 62, Public Meeting at PacifiCorp's 2015 IRP Presentation at 2 (Aug. 16, 2016).

17 Even if the Coalition were "cherry picking" certain changes, it would no different than PacifiCorp's "cherry picking" which changes to the 2015 acknowledge IRP should be made in its own testimony.

limit that number. The Coalition still believes compromise on this issue is possible, but only if the ALJ requires PacifiCorp to cooperate.

Finally, if PacifiCorp wants to challenge whether the Coalition's model runs are reasonable, or whether the results of those runs are more reasonable than those originally run by PacifiCorp, the Company will have an opportunity to do that later. If PacifiCorp believes the Coalition is "cherry-picking" data, then it should rebut its testimony rather than refuse the discovery request. As is, PacifiCorp's objections assume that PacifiCorp is permitted to determine whether the information requested is reasonable rather than the Commission.

4. Requiring Small QF Parties to Pay for Discovery is Not Equitable

PacifiCorp's response maintains that the conditions available to the Coalition in exchange for accessing its IRP models are reasonable because other parties have agreed to them. This argument is inadequate, because what may be reasonable for some parties should not be presumed reasonable for all parties. This is true for both the "other parties" that purchase licenses to PacifiCorp's models as well as the "other utilities" and "other vendors" PacifiCorp vaguely alludes to in its response.

Moreover, PacifiCorp has already been directed by the Commission to provide large QFs access to its modeling. The Commission ordered PacifiCorp provide "open access to its production cost model (GRID) and provide training and technical assistance" to QFs negotiating non-standard avoided cost prices.[18] The Commission's direction should inform PacifiCorp's decision on this issue rather than anecdotal evidence, presumably from PacifiCorp's vendor. If small QFs are required to pay for their

[18] Re OPUC Investigation into QF Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 2 (May 13, 2016).

discovery rights, then their access to meaningful participation in the Commission's proceedings will necessarily be limited. Small QFs, unlike the utilities, do not have large budgets for regulatory proceedings that are paid for by ratepayers. The ability to participate in the process by which their avoided cost rates are determined should be protected for all QF parties, not just large QFs.

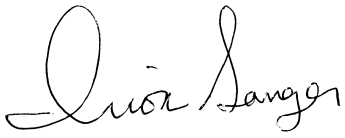
Finally, any contractual obligation binding PacifiCorp to require only highly confidential, in-office access to its computer models is unreasonable and self-serving. PacifiCorp should not be permitted to limit access to its models by requiring parties to be either willing and able to work within PacifiCorp's local office or to purchase separate access to proprietary software PacifiCorp selects and uses for its modeling.

IV. CONCLUSION

For the reasons discussed in the Coalition's Motion and above, the Coalition requests that ALJ Arlow require PacifiCorp to provide complete responses to Coalition DRs 1.2, 1.3, and 1.4.

Dated this 10th day of November, 2016.

Respectfully submitted,



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