BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP, dba PACIFIC POWER,	)	Docket No. UM 1794
Investigation into Schedule 37 - Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less.	)	REPLY OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION AND RENEWABLE ENERGY COALITION IN SUPPORT OF REQUEST FOR ALJ CERTIFICATION

I. INTRODUCTION

Pursuant to OAR 860-001-0420, the Community Renewable Energy Association ("CREA") and Renewable Energy Coalition ("Coalition") (jointly, "Joint QF Parties") respectfully submit this reply in support of their request that Administrative Law Judge ("ALJ") Allan Arlow certify the ruling issued November 18 ("November 18 Ruling") in the above-captioned contested case proceeding before the Oregon Public Utility Commission (the "Commission"). This discrete discovery dispute centers around the Coalition's data requests regarding PacifiCorp's IRP System Optimizer model ("SO model") and Planning and Risk model ("PaR") (jointly "IRP models"). Specifically, Coalition DR 1.2 and 1.3 request that PacifiCorp perform additional model runs to update Table 8.1 from its 2015 IRP, and Coalition DR 1.4. requests access to the IRP models themselves. PacifiCorp's Response continues a tortured retelling of the facts and law at issue in this proceeding rather than answering a relatively simple legal question: whether PacifiCorp should be compelled to perform potentially only a few additional IRP model runs. The Joint QF Parties submit that PacifiCorp attempts to cloud the issues in this proceeding, and it should not withhold relevant discovery materials.

II. REPLY ARGUMENT

PacifiCorp weaves the Coalition's data requests into a parade of horribles to justify using an unreviewable black box to set the sufficiency periods that determine its avoided cost rates. The Commission has never suggested that PacifiCorp should be permitted to unilaterally set its own rates. To the contrary, it has encouraged parties to challenge the veracity of the data and underlying assumptions PacifiCorp uses in its IRPs, and expressly directed this proceeding so parties could, among other things, review whether the assumptions and inputs in, and the conclusions that derived from, the 2015 IRP are accurate in light of subsequent unaccounted for events. PacifiCorp has no legal basis to refuse producing obviously relevant discovery material, and instead attempts to distort the Commission's policy, procedure, and discovery rules to avoid producing evidence that could ultimately raise (or prevent the Company from further lowering) its avoided cost prices.

With respect to process, the Joint QF Parties are not challenging the Commission's methodologies for determining avoided cost rates, but rather PacifiCorp's refusal to adhere to them. The Joint QF Parties raised several issues during PacifiCorp's 2015 IRP, including the likelihood of early coal plant retirements, which PacifiCorp chose not to account for in its model runs. That is PacifiCorp's prerogative, but it can hardly expect to garner sympathy from the Joint QF Parties for having to do extra work now because it chose to ignore the Joint QF Parties and rely on inaccurate assumptions then. PacifiCorp's self-selected assumptions in the 2015 IRP pushed the sufficiency period out, and lowered avoided cost rates, despite the fact that PacifiCorp knew it would have an increasing need for renewable generation and would retire more non-renewable generation.

PacifiCorp's past IRPs resulted in more near-term sufficiency periods that were within the action plan and were more thoroughly vetted, which is why this issue has become more contentious. Prior to the 2015 IRP, there has never been a reason to access the IRP models outside of the IRP process because the sufficiency period was normally only a few years out. And in past proceedings to set rates (including retail rates and large QF cost rates), parties received access to whatever models PacifiCorp uses.

The Joint QF Parties are surprised that PacifiCorp does not want to provide access to its IRP models. But again, the Joint QF Parties are not asking the Commission to reconsider the IRP process and are merely asking that PacifiCorp comply with the Commission's orders in this proceeding. In short, PacifiCorp should be incentivized to cooperate with parties to produce accurate IRP results rather than to drag its feet, stonewall, and then exaggerate the amount of work it might take to produce more reasonable results.

1. Additional Model Runs are Relevant and within the Scope of this Proceeding

PacifiCorp uses the IRP models to estimate the date for its sufficiency period, which is at the heart of this proceeding. Parties should be able to vet the sufficiency period date with the same models that are used to create them. PacifiCorp's 2017 IRP process, and its various other proceedings inside and outside of Oregon are not relevant and unnecessarily complicate the simple issue at hand: whether PacifiCorp can rely on a black box to set its avoided cost prices. Likewise, these data requests do not attempt to re-create the 2015 IRP or create "*an entirely new*

IRP,"[1] but merely attempt to determine if discrete, known and reasonable changes would alter the sufficiency period produced by PacifiCorp's proprietary computer modeling.

PacifiCorp ran dozens of scenarios in its 2015 IRP, but failed to include any scenarios that accounted for SB 1547 (which PacifiCorp in large part penned),[2] early coal plant closures (which the Coalition predicted during the 2015 IRP proceeding, and PacifiCorp announced shortly thereafter), or fewer short-term firm front office transactions ("FOTs") (which the Coalition recommended in the 2015 IRP). The Joint QF Parties raised many of these issues during the 2015 IRP and PacifiCorp chose not to account for them during its IRP process. The Joint QF Parties re-raised these issues in UM 1729 and were instructed to vet them in this proceeding. Now, the Joint QF Parties simply want to see whether PacifiCorp's models would have produced a different sufficiency period had PacifiCorp accounted for these events.

PacifiCorp's Response acknowledges the scope of this proceeding includes "allow[ing] stakeholders to vet PacifiCorp's proposal in light of the issues raised in UM 1729(1)", but concludes "this docket was not opened to recreate the 2015 IRP."[3] Issues raised in UM 1729(1) include the effects of SB 1547 and early coal plant retirements on PacifiCorp's sufficiency period, as well as PacifiCorp's reliance on FOTs. All of these issues were the subject of the

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1 PacifiCorp's Response at 7.

2 See Re PacifiCorp, dba Pacific Power, Application to Update Schedule 37 QF Information, Docket No. UM 1729(1), Public Meeting at 33:00 (Mar. 22, 2016) (Chair Ackerman asking PacifiCorp's Bryce Dalley, "I am trying to figure out whether you guys are just disingenuous or cynical and disingenuous and I am coming to the conclusion it's both cynical and disingenuous … So, as you were testifying to the legislature, your company, about what your needs were going to be for renewable resources to fill the new RPS requirement, somebody in PacifiCorp was making the decision to make this filing?").

3 PacifiCorp's Response at 2.

Coalition's data requests that PacifiCorp has refused to provide responses to, and do not require PacifiCorp to recreate the 2015 IRP.[4]

Staff's Response to the Joint QF Parties' Motion for Clarification ("Staff's Response") agrees that the specific model runs requested "are pertinent to this proceeding … to test the reasonableness of PacifiCorp's assumptions in its acknowledged 2015 IRP that PacifiCorp will not need a new thermal resource until 2028 in light of events that have occurred since PacifiCorp prepared the IRP and to test some of the data used in the IRP itself."[5] Moreover, "Staff believes this type of vetting falls within the scope of the investigation order in Order No. 16-307."[6]

PacifiCorp's Response also acknowledges that review of PacifiCorp's avoided cost prices is limited to determining whether its avoided cost "filing complies with the Commission's *methodologies* for establishing avoided cost prices."[7] To be clear, the Joint QF Parties are not challenging the Commission's methodologies for establishing avoided cost prices. Those methodologies start with the acknowledged IRP to determine the reasonableness of the sufficiency periods. The Commission has already determined that the acknowledged IRP's sufficiency period for renewables is not reasonable in light of SB 1547 and selected 2028 based on PacifiCorp's REC bank. The Joint QF Parties are simply trying to see what that date would

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4 See Staff's Response to the Joint QF Parties' Motion to Suspend Procedural Schedule at 3 ("issues raised in Docket no. UM 1729 regarding PacifiCorp's post-2015 IRP acknowledgement avoided cost filing include at least two issues that appear to be precluded under the ALJ's orders denying the motions to compel filed by CREA and REC . . . Accordingly, Staff agrees that suspension of the procedural schedule is appropriate to allow the Commission opportunity to certify the ALJ's rulings and for the ALJ to clarify the scope of this proceeding").

5 Staff's Response at 7-8 and n. 12.

6 Id.

7 PacifiCorp's Response at 3.

be using the same methodology (the IRP models) that was used to set the original dates. Staff's Response also agrees that this is "the appropriate venue for examining avoided cost prices" despite PacifiCorp's contrary characterization of Order No. 16-117.[8]

2. PacifiCorp's Response Continues to Offer Factually Incorrect Information and Conveniently Ignores Information That is Plainly Contradictory

PacifiCorp's Response completely ignores several arguments made by the Joint QF Parties and instead incorrectly reiterates earlier claims that the Coalition's data requests were denied because:

- The Joint QF Parties are allegedly cherry picking only certain updates, which would not produce relevant information. This is incorrect because the Joint QF Parties are only trying determine what the dates would be if more reasonable, rather than PacifiCorp's outdated and inaccurate, assumptions were used.

- Any additional model runs would be unduly burdensome. This is incorrect because it ignores the Coalition's attempts to further limit the scope of additional model runs.

- Running both old (2015) and new (2017) IRPs at the same time is prejudicial. This is incredulous when balanced against prejudice to QFs of not being able to even challenge the reasonableness of the rates, and does not provide a legal basis for withholding relevant discovery materials.

- The 2015 IRP was properly vetted and acknowledged. This is incorrect because it conflates the more robust vetting of the IRP's action plan that did not address the sufficiency periods, does not acknowledge the lack of an opportunity to challenge and obtain Commission resolution of the IRP, and ignores the very purpose of this expedited proceeding.

- Providing the models is contrary to its third-party contract obligations. PacifiCorp has only alleged, but never provided any evidence of its specific contractual limitations, nor demonstrated that it could not have entered into other arrangements that would have allowed parties in regulatory proceedings reasonable access to the models used to set rates. This objection also does not provide a legal basis for withholding relevant discovery materials, and supports

[8] Staff's Response at 8.

the Joint QF Parties' argument that PacifiCorp is uniquely situated to perform a reasonable number of additional model runs.

A. The Joint QF Parties Are Not "Cherry Picking" Any More than PacifiCorp or the Commission

PacifiCorp's position is essentially that, when the Company or the Commissioners consider issues like the impact of SB 1547 and actual planned coal-plant retirements, then that information is relevant; however, when the Joint QF Parties consider that same information, then the information is "cherry picking" and therefore not relevant. This position misstates the rules for determining relevance and ignores the fact that PacifiCorp did the exact same thing to determine its current avoided cost rates. PacifiCorp has proposed rates based on a renewable sufficiency period of 2028 (which is different than the acknowledged 2015 IRP) and cost information from its 2015 IRP Update, and current rates are based on the Commission's decision at the last public meeting, including a 2-1 vote regarding the non-renewable sufficiency date.

The Joint QF Parties should be able to know what the IRP models would estimate to be the resource sufficiency period based on their own inputs and assumptions, not just those of PacifiCorp or what the Commissioners adopted on a temporary basis at a public meeting. The Coalition specifically requested limited model runs to avoid re-running the entire 2015 IRP. If PacifiCorp believes those results are any more of "cherry picking" than its own, then it should make those arguments based upon the merits of the results, not to preclude providing relevant information.

B. PacifiCorp Falsely and Repeatedly States that the Joint QF Parties Are Requesting an Unduly Burdensome 100 Additional Model Runs

By refusing to work with the Joint QF Parties' offer to limit their discovery request, PacifiCorp is essentially arguing that producing even *one additional model run* is unreasonably burdensome. PacifiCorp repeats its claims that it would take 100 additional model runs, without acknowledging that it has refused to even discuss limiting the number of additional runs needed. PacifiCorp has repeatedly made these incorrect statements in its pleadings and fails to correct them in its latest pleading. PacifiCorp should not be permitted to stonewall producing relevant discovery materials by simply falsely stating that it would take "52 SO model runs and 42 PaR model runs" to update its Table 8.1.[9]

The Joint QF Parties have informed PacifiCorp that they have and will narrow their requests. PacifiCorp conveniently ignores that fact so that it can keep telling an inaccurate story of how burdensome the data requests are. No matter how many times PacifiCorp says it would take nearly 100 model runs and about a month to complete the Coalition's initial data request, it remains an inaccurate portrayal of this discovery dispute. Without cooperation from PacifiCorp, all the Joint QF Parties can submit is that PacifiCorp absolutely does not need to run 100 model runs or spend a month vetting the sufficiency period.

C. The Joint QF Parties, and Not PacifiCorp, Are Prejudiced by the Failure to Run the IRP Models

QFs are obviously prejudiced if they cannot review and challenge the resource sufficiency date that is produced by the IRP models. Such a rule runs afoul of the Commission's consistent policy of transparency in rate-setting matters. Yet PacifiCorp has the audacity to

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[9] PacifiCorp's Response at 9.

claim that it would be prejudiced by having to run models for both this case and the 2017 IRP at the same time. In balancing the equities here, PacifiCorp cannot credibly argue that it is simply too busy "preparing to file its 2017 IRP with six state commissions" to fully participate in this expedited contested case proceeding.[10] The Company, not the Joint QF Parties, chooses to use model and to file avoided cost rates based on that model. The Joint QF Parties do not want, and are not requesting that PacifiCorp ultimately be required to perform, an unduly burdensome number of runs.

D. The Resource Sufficiency Periods Have Never Been Fully Vetted

PacifiCorp maintains that the sufficiency period has been fully vetted by the IRP process, which again misstates the Commission's policies and the entire purpose of this case. PacifiCorp seems to argue that by filing comments in PacifiCorp's IRP, which were ultimately ignored by PacifiCorp, the Joint QF Parties are done vetting. But, that is not correct. The Coalition filed comments recommending additional analysis (with less FOTs, more coal-plant retirements, etc.) and PacifiCorp completely ignored those comments. At the public meeting considering PacifiCorp's 2015 IRP, Chair Ackerman explained that the Coalition's comments were outside the scope of PacifiCorp's IRP and would be considered in a separate proceeding.[11] The Commission also rejected the Joint QF Parties' proposal in UM 1610 to allow QFs to fully vet

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[10] Id. at 10 ("PacifiCorp lack the resources to conduct these model runs in this expedited avoided cost proceeding without compromising its ability to deliver its 2017 IRP on time.").

[11] Re PacifiCorp 2015 IRP, Public Meeting at 1:24:00 (responding to request asking that acknowledgment not include the year of deficiency, "if you have comments about PacifiCorp's IRP that's one thing, but if it's about QFs and avoided costs, then we can't take your comments today").

and challenge the sufficiency period date in the IRP, and instead ruled QFs must challenge the sufficiency period date in an avoided cost rate proceeding.[12]

PacifiCorp's Response suggests that parties are free to vet any data PacifiCorp chooses to allow it to use (i.e., the 2015 IRP Updates renewable cost information), but not permitted to vet any data PacifiCorp chooses not to allow (i.e., the impact of SB 1547 and early coal plant retirement on the sufficiency dates). PacifiCorp justifies this under the cloak of how burdensome it may be to comply with the Coalition's data requests. PacifiCorp maintains that its models are "complex and time-consuming to complete and should not be done in an expedited proceeding,"[13] yet also rejected vetting the sufficiency period within the original IRP process itself. PacifiCorp refuses to compromise or work with the Joint QF Parties to limit the number of additional runs. And the Joint QF Parties are unable to substantiate PacifiCorp's claims, because they do not have access to the models.

E. The Commission Should Not Allow a Utility to Enter into a Contract that Effectively Precludes Intervenors from Accessing the Model Used to Set Rates

Finally, PacifiCorp should not be allowed to use "complex and time-consuming"[14] computer models to set its rates and unilaterally enter into contractual obligations that limit the ability of parties to use those models to review its rates. PacifiCorp could have made different contractual arrangements when negotiating with its vendor for its IRP models. PacifiCorp provides access to its proprietary GRID model and has long been on notice that parties expect

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12 Re OPUC Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 9-12 (Feb. 24, 2014).

13 PacifiCorp's Response at 9.

14 Id.

such access. Even assuming that PacifiCorp did not intend to prevent parties from reviewing its rates, it still should not be permitted to enter into contracts that do so. PacifiCorp suggests that the Joint QF Parties' witness travel to Portland and work out of PacifiCorp's offices, or separately contract with the vendor to obtain access to the models. However, it may not be possible to obtain the license to the model, and the cost of doing so would far exceed the standard, reasonable costs of participation in Commission proceedings. PacifiCorp's proposed treatment of access to its chosen proprietary model would provide an effective bar, or an economic barrier, to reviewing avoided cost rates and is against the public interest.

III. CONCLUSION

For the reasons described above, the Joint QF Parties respectfully request that ALJ Arlow certify the November 18 Ruling for the Commission's consideration.

RESPECTFULLY SUBMITTED this 20th day of December, 2016.

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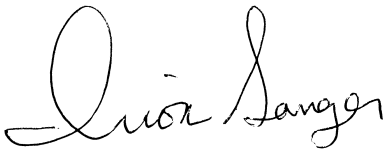

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