



825 NE Multnomah, Suite 2000
Portland, Oregon 97232

November 7, 2016

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-3398

Attn: Filing Center

RE: UM 1794—PacifiCorp's Response to Motion to Compel

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket its Response to Renewable Energy Coalition's Motion to Compel.

If you have questions about this filing, please contact Natasha Siores at (503) 813-6583.

Sincerely,

R. Bryce Dalley
Vice President, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1794

In the Matter of

PACIFICORP d/b/a PACIFIC POWER,

Investigation into Schedule 37 – Avoided
Cost Purchases from Qualifying Facilities
of 10,000 kW or Less.

RESPONSE TO
MOTION TO COMPEL

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) respectfully requests that the Administrative Law Judge (ALJ) deny the Renewable Energy Coalition’s (REC) Motion to Compel. REC seeks to compel PacifiCorp to rerun its top performing portfolios from its 2015 Integrated Resource Plan (IRP) and IRP Update (about 100 model runs), which is an inappropriate attempt to compel the creation of an entirely new IRP in this *expedited* avoided cost proceeding.

To respond to REC’s request, PacifiCorp would need to perform approximately 100 model runs and essentially recreate its 2015 IRP. The Company estimates this would take at least a month. If PacifiCorp is compelled to rerun its 2015 IRP using REC’s cherry-picked updates, PacifiCorp would then be forced to rebut REC’s arguments through its own updated IRP model runs, and this proceeding would be transformed from an expedited avoided cost docket into a drawn-out battle of competing IRP models. PacifiCorp lacks the resources to conduct 100+ model runs for REC (and any rebuttal model runs that may be necessary) within the context of an expedited avoided cost proceeding without compromising its ability to deliver its 2017 IRP on time.

Although REC participated in the Company's 2015 IRP, it now claims that the IRP was not appropriately vetted by the Public Utility Commission of Oregon (Commission) or parties during that multi-year process. In addition to proposing the inappropriate forum to re-run the Company's 2015 IRP, REC has not demonstrated that PacifiCorp should be required to develop information or perform a special study in accordance with OAR 860-001-0500(4) for the following reasons: (1) REC's request to only update certain assumptions while leaving all other assumptions stale and based on 2014 data would not produce information with a high degree of relevance; (2) re-running these models would be unduly burdensome because it would take PacifiCorp's IRP staff at least a month dedicated solely to responding to these requests, which would impede the Company's development of the 2017 IRP; and (3) PacifiCorp does not possess the unique capability to prepare this study—REC may contract with the vendor and run these models as other intervenors have chosen to do.

I. STATEMENT OF FACTS

This investigation was opened at the conclusion of a lengthy process to update the Company's standard avoided cost prices in compliance with OAR 860-029-0080, which requires a post-IRP acknowledgement update. That proceeding concluded with PacifiCorp's August 22 compliance filing, which updated its standard avoided cost prices based on renewable and non-renewable deficiency periods beginning in 2028, and cost and performance data from the Company's 2015 IRP.

In Order No. 16-307, the Commission opened this expedited contested case proceeding to: (1) allow PacifiCorp to propose updated avoided cost prices; and (2) allow stakeholders to vet PacifiCorp's proposal in light of the issues raised in UM 1729(1). This docket, however, is not an opportunity for REC to reopen the Company's 2015 IRP proceeding.

Inaccurately claiming that the Commission-acknowledged 2015 IRP was never vetted, either by the Commission or parties, REC seeks to compel PacifiCorp to perform nearly 100 model runs from its 2015 IRP. In this expedited investigation into the Company's avoided cost prices, REC asks PacifiCorp to rerun all of its top performing scenarios from its 2015 IRP to update Table 8.1 (REC Data Requests 1.2 and 1.3). REC asks PacifiCorp to update only a limited number of assumptions, and proposes to leave all others outdated from 2014 (including outdated load and market price information and outdated environmental policy assumptions that rely on the U.S. Environmental Protection Agency's (EPA) draft Clean Power Plan (CPP) rule). The model runs REC requests would not produce information with a high degree of relevance as required under OAR 860-001-0500(4). Additionally, REC seeks to require PacifiCorp to produce the proprietary IRP System Optimizer and PaR models (REC Data Request 1.4).

The Company's 2015 IRP included the following public process:

1. The public input process began in June 2014 and included five state meetings, seven public input meetings, and two technical workshops with parties;
2. The Company filed its IRP with the Commission on March 31, 2015;
3. Parties filed opening comments on August 27, 2015, PacifiCorp filed reply comments on September 24, 2015, parties filed final comments on October 15, 2015, and PacifiCorp filed final comments on November 5, 2015;
4. Staff filed its report and recommendation on December 3, 2015;
5. The Commission considered the 2015 IRP at a special public meeting on December 17, 2015; and
6. The Commission issued its acknowledgment order on February 29, 2016.

REC participated in the Commission’s 2015 IRP proceeding—REC intervened and filed two sets of comments.¹ PacifiCorp responded to 178 data requests from Oregon parties in that proceeding; however, REC did not issue any discovery requests. Arguing that the Commission did not fully vet the Company’s 2015 IRP—even though the process comported with the Commission’s policies—REC now seeks to challenge that process in an expedited contested case avoided cost proceeding.

Under the Commission-approved process, utilities file two routine updates to standard avoided cost prices: (1) a post-IRP acknowledgment update; and (2) a limited May 1 update. Stakeholders may seek suspension of the Company’s avoided cost prices for a review into whether the Company’s filing complies with the Commission’s *methodologies* for establishing avoided cost prices.² The Commission has stated that avoided cost methodologies are decided in generic avoided cost proceeding, and the examination of a particular utility’s avoided cost filing is limited to a review of compliance with those methodologies.³

In the current investigation, which resulted from the Company’s post-IRP acknowledgment update, the Commission did not direct parties to propose permanent changes to either the process or the methodologies to update a utilities’ avoided cost. The procedural schedule contains a target order date of April 14, 2017, to allow the Company to make its May 1 filing and return to the regularly-scheduled avoided cost updates.

¹ REC filed Opening Comments on August 27, 2015, and Final Comments on October 15, 2015.

² *In the Matter of Public Utility Commission of Oregon 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 at 4 (Oct. 28, 2009).

³ *Id.*

II. LEGAL STANDARD

Under the Oregon Rules of Civil Procedure (ORCP), “parties may inquire regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party.”⁴ Relevant evidence is evidence that tends to make the existence of any fact at issue in the proceeding more or less probable than it would be without the evidence; and be of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.⁵ The Oregon courts and the Commission have affirmed that the information sought in discovery must be reasonably calculated to lead to the discovery of admissible evidence.⁶

Under OAR 860-001-0500(4), “a party will *not* be required to develop information or prepare a study for another party unless the capability to prepare the study is *possessed uniquely* by the party from whom discovery is sought, the discovery request is *not unduly burdensome*, and the information sought has a *high degree of relevance* to the issues in the proceeding” (emphasis added).

III. ARGUMENT

REC inappropriately seeks to compel PacifiCorp to rerun models from its 2015 IRP, which is outside the scope of this proceeding. In addition to choosing the improper forum to challenge the 2015 IRP, REC’s arguments to compel PacifiCorp to rerun studies from its 2015 IRP fail on all counts: (1) only updating certain assumptions would not lead to highly relevant information because it would necessarily mean mismatching outdated and updated assumptions;

⁴ ORCP 36 B(1). The Oregon Rules of Civil Procedure apply in Commission contested case and declaratory ruling proceedings unless inconsistent with Commission rules, a Commission order, or an Administrative Law Judge ruling. See OAR 860-001-0000(1).

⁵ OAR 860-001-0450.

⁶ See *Baker v. English*, 324 Or. 585, 588 n.3 (1997); *In re Portland Extended Area Service Region*, Docket No. UM 261, Order No. 91-958 at 5 (Jul. 31, 1991).

(2) REC's request is unduly burdensome because it would take at least a month of PacifiCorp's IRP staff's time dedicated solely to responding to this request; and (3) REC has the option to develop the information itself as other parties have done.

A. This Expedited Proceeding is not the Proper Forum to Perform 100 Model Runs to Recreate the Company's 2015 IRP.

In its Motion to Compel, REC blatantly attempts to collaterally attack the Company's 2015 IRP, which is not within the scope of this proceeding and contrary to Commission policy. The scope of an avoided cost review includes whether the Company's filing complies with the Commission's methodologies for establishing these prices.⁷

In Order No. 10-488, the Commission stated that the IRP process is the proper forum for resolving resource sufficiency issues because "the IRP processes are conducted with extensive public review regarding the timing of the utility's loads and its consequent resource needs."⁸ The Company's 2015 IRP was filed, reviewed, and acknowledged in accordance with the Commission's process; REC participated in that process but now disputes the outcome.

The Company followed the Commission-approved process in the 2015 IRP proceeding—the assumptions in that proceeding were appropriately developed, vetted, and considered by the Commission and intervenors. In its Motion to Compel, REC acknowledges that it participated in the Company's 2015 IRP process and even cites to its comments filed with the Commission, including concerns about excessive reliance on short-term contracts and alleged inaccurate assumptions regarding coal plant operations.⁹ The Commission was aware of REC's concerns when it acknowledged the Company's 2015 IRP. Nevertheless, REC now claims that the

⁷ See Order No. 09-427 at 4.

⁸ *In the Matter of Public Utility Commission of Oregon 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).*

⁹ Motion to Compel at 7-8.

Company’s 2015 IRP was never vetted and “reflects nothing more than PacifiCorp’s estimates”¹⁰ and that “some of PacifiCorp’s assumptions in its 2015 IRP were unreasonable *at the time PacifiCorp selected its preferred portfolio*”¹¹ (emphasis added). REC simply does not agree with the outcome of that proceeding and attempts to undermine the Commission’s conclusions by asking PacifiCorp to rerun all of the top performing resource portfolios identified in the 2015 IRP (which requires performing 100 model runs) in this expedited proceeding.

REC claims that PacifiCorp should not be allowed to rely on its IRP modelling if it does not either run additional models from the 2015 IRP in this avoided cost proceeding—reopening the 2015 IRP—or hand over the model to REC contrary to PacifiCorp’s contractual obligations. REC states that “PacifiCorp cannot be allowed to rely on complex computer modeling if it does not make the modeling available to interested parties.”¹² This argument fails because the IRP modeling is vetted *in the IRP proceeding*.¹³

REC’s requests underscore the exact concerns articulated by the Company in UM 1610 where the Commission declined to adopt REC’s proposal to create a new forum to litigate IRP inputs and assumptions—that parties could leverage a second process to slow down updates in the avoided cost process.¹⁴ As the Commission has previously affirmed, the purpose of an avoided cost investigation is to determine whether the Company’s avoided costs were calculated in compliance with Commission-approved methodologies, not to dispute or challenge the

¹⁰ *Id.* at 2.

¹¹ *Id.* at 7.

¹² *Id.* at 9.

¹³ In UM 1610, the Commission recognized the problem with REC’s request to challenge the IRP inputs and assumptions in a litigated forum outside the context of the IRP process. In that proceeding, the Commission declined to adopt REC’s proposal to develop an addition process to litigate assumptions from the IRP. *See In the Matter of Public Utility Commission of Oregon, Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 2 (May 13, 2016).

¹⁴ *See* UM 1610 Phase II PAC/900, Drennan/11-12.

underlying methodologies.¹⁵ Here, by reasoning that additional model runs are necessary because the IRP was never properly vetted, REC seeks to inappropriately challenge the Commission-approved IRP process.

B. The Requested Model Runs Would Not Be Highly Relevant Because REC Seeks to Cherry-Pick Only Certain Updates While Maintaining Other Outdated Assumptions.

Under OAR 860-001-0500(4), a party will not be required to develop information or a special study unless “the information sought has a *high degree of relevance* to the issues in the proceeding.”

Performing 100 model runs associated with PacifiCorp’s top performing portfolios from its 2015 IRP with only a few select updates while leaving other stale assumptions would not produce highly relevant information in this proceeding. For this reason, REC’s claims that it would work with PacifiCorp to produce “limited and narrow” runs is not a compromise position at all because it would necessarily result in incomplete, irrelevant information based on arbitrarily updated or outdated assumptions. Alternatively, updating all assumptions, including those requested by REC, would not be possible in this expedited contested case proceeding because it would require *an entirely new IRP*. As discussed above, preparing a new IRP takes about one year—PacifiCorp is well aware of that time commitment because it is currently developing its 2017 IRP for filing in March 2017.

¹⁵ See 09-427 at 4.

1. REC's Request to Update Only Certain Assumptions from the 2015 IRP Would Produce Incomplete Information Which Would Not Be Highly Relevant in this Proceeding.

REC seeks to require PacifiCorp to re-run the top performing portfolios from its 2015 IRP with only select updates, and incorrectly claims that this extremely burdensome process would produce meaningful and relevant information. These cherry picked updates include the impacts of Senate Bill 1547, the retirements of Naughton 3 and Cholla 4, and to cap all front office transactions at 13 percent of all energy from new resources for all of the top performing portfolios from the 2015 IRP (REC Data Requests 1.2 and 1.3). The IRP contains numerous planning assumptions, including load forecasts, environmental policies, changes to existing resource availability and capacity ratings, generator operating costs, and capacity contribution values, among others. All of these assumptions influence the timing, type, and location of future resources in the IRP.

The Company cannot simply change one or two inputs while all other inputs remain stale and produce anything useful in this proceeding. For example, the 2015 IRP was based on the *draft* CPP proposal from the EPA, for which the Company developed a complex analytical approach requiring multiple runs to develop a single portfolio. These background assumptions for the draft CPP would not be relevant today given that the EPA issued a final CPP rule. This is just one example of why the information sought would be necessarily incomplete and therefore not relevant in this proceeding.

For these reasons, REC cannot credibly claim that new model runs based on limited updates but otherwise stale assumptions will produce information with a high degree of relevance. There is a reason it takes the Company nearly a year to prepare its biennial IRP—these model runs are complex and time-consuming to complete. Responding to REC's request

with any meaningful information would turn this proceeding into another IRP. REC's request is even more unreasonable because PacifiCorp is currently in the middle of its year-long public input process to develop its 2017 IRP.

2. REC's Offer to Compel only "Narrow and Limited" Runs Is Not a Meaningful Compromise.

Because it is simply not possible to produce meaningful model runs using limited updates to otherwise stale resource planning assumptions, REC's claim that it takes a reasonable position and would be "willing to work with PacifiCorp to reduce any burdens associated with performing any specific model runs"¹⁶ is actually not a compromise position at all. For the reasons articulated above, REC is not simply asking the Company to re-run a couple of models to "test" assumptions and inputs from the 2015 IRP. To produce any relevant information, REC would necessarily ask PacifiCorp to produce an entirely new IRP.

3. The Proper Forum to Address REC's Requested Updates is in the 2017 IRP Process, which is Currently Underway.

REC does not seem to disagree that the proper forum to run a new IRP is in the 2017 IRP, but complains about the timing of that proceeding. The 2017 IRP stakeholder process commenced in June 2016, and the Company has already held several public input meetings and received feedback from stakeholders. Once the IRP is filed, parties will have the opportunity to file formal comments and participate in the Commission's public meeting. REC complains that running updated IRP modeling in the ongoing 2017 IRP proceeding would be "too late and useless for the purposes of this proceeding."¹⁷ REC is actually challenging the existing Commission-approved process and relationship between the IRP process and this avoided cost investigation.

¹⁶ Motion to Compel at 1.

¹⁷ *Id.*

C. Directing PacifiCorp to Respond to REC's Requests to Rerun its Models from the 2015 IRP Would be Extremely Burdensome and Unreasonably Delay this Expedited Proceeding.

REC's request for PacifiCorp to rerun all of the top performing portfolios identified in the 2015 IRP in this case is not only outside the scope of this proceeding but also unduly burdensome and likely not possible based on the Company's current work preparing for the 2017 IRP. Additionally, responding to this request would unreasonably delay this proceeding.

1. Responding to REC's Requests to Basically Rerun the 2015 IRP Would Be Unreasonably Burdensome.

Under OAR 860-001-0500(4), the request to develop information or prepare a study for another party cannot be unreasonably burdensome. Here, REC asks the Company to perform 100 model runs to create a new IRP—a document that typically takes about one year to develop—in the context of an expedited avoided cost investigation.

PacifiCorp's IRP staff estimates that responding to REC's request would require the Company to complete 52 System Optimizer runs and 42 PaR runs, which would take about one month to complete if the team did nothing but respond to this request. This is simply not reasonable, particularly since the Company is currently preparing its 2017 IRP. Responding to REC's request would severely impede PacifiCorp's ability to complete its six-state 2017 IRP on time.

As discussed previously, REC's proposal to limit the number of runs requested is not a meaningful compromise because it is unreasonable to simply update one or two inputs while maintaining other stale inputs. For these reasons, REC's request to rerun scenarios from the 2015 IRP is *necessarily* unduly burdensome. This is the exact reason that an expedited, contested case proceeding to set the Company's avoided cost prices is not the correct forum to rerun the IRP.

2. Directing PacifiCorp to Essentially Run an Expedited IRP Would Significantly Delay this Expedited Proceeding.

In addition to REC's request being unduly burdensome, rerunning the 2015 IRP would significantly delay this expedited contested case proceeding. In Order No. 16-307, the Commission ordered this *expedited* contested case proceeding, which is simply not possible if REC is able to compel PacifiCorp to rerun all of the top performing portfolios from the 2015 IRP. The Commission has previously noted that one of its primary stated goals in implementing PURPA has been to adopt policies and rules that promote QF development through accurate and timely price information about a utility's avoided costs.¹⁸ Requiring the Company to perform 100 model runs from the 2015 IRP in this investigation would frustrate this goal and cause additional uncertainty regarding QF rates.

The procedural schedule contains a target order date of April 14, 2017, which is in time for the Company's annual May 1 filing. Although REC already noted that it is likely to request an extension to the procedural schedule, PacifiCorp does not believe any delay is necessary at this point. However, if REC successfully compels PacifiCorp to re-run 100+ models from the 2015 IRP—turning this proceeding into a battle of 2015 IRP modeling—PacifiCorp does not see how this proceeding could be resolved in any sort of expedited timeframe.

D. REC May Re-Run the Company's 2015 IRP.

Under OAR 860-001-0500(4), PacifiCorp does not possess the "unique capability" to run the study as requested by REC; it is simply more appealing from REC's perspective to place an extraordinary hardship on PacifiCorp *in the incorrect proceeding*. Contrary to REC's assertions, PacifiCorp is not preventing discovery of relevant information through using a proprietary model to run its IRP.

¹⁸ See Order No. 09-427 at 3-4.

While PacifiCorp does not agree that this is the proper forum to rerun the Company's 2015 IRP, if REC would like to rerun portfolios from the Company's IRP in this proceeding, it has options. REC may follow the lead of other parties who have contracted directly with the vendor to purchase a license for the proprietary software. This requirement for staff or intervenors to work directly with the vendor is typical for utilities using these proprietary models. Alternatively, the Company can provide demonstrations of the models at the Company's office on a highly confidential basis so long as proper arrangements are made with the vendor.

1. REC May Seek to Contract with the Vendor to Gain Access to the Proprietary Models to Re-Run the Company's 2015 IRP.

It is unclear why REC was unable to receive pricing information from the vendor for an arrangement that other intervenors have successfully secured. In its Motion to Compel, REC vaguely states that the vendor "was not able to help the Coalition obtain pricing information or otherwise move forward with this option."¹⁹ REC dismisses this option and provides no additional detail regarding why such an option is unavailable to REC, particularly when REC also states that it knows that other entities have successfully contracted with that vendor for this exact information. REC may have just made a cursory inquiry for purposes of this discovery dispute.

As discussed above, REC incorrectly argues that the *only* opportunity to vet the Company's IRP assumptions is in this avoided cost proceeding and by paying a substantial sum of money to the vendor. In fact, the Commission's IRP proceeding is the proper forum to vet the IRP assumptions. Other parties have chosen to contract with the vendor to purchase the proprietary modeling software to challenge the Company's IRP assumptions *in the IRP*

¹⁹ Motion to Compel at 14.

proceeding. Therefore, REC’s claims that “the Company is effectively creating a third-party barrier to relevant data and then requiring parties to pay for the discovery of that data”²⁰ is simply not true when the proper forum to resolve these issues is in the IRP proceeding itself.

2. The Limitations on Access to the Proprietary Software is Not Unique to PacifiCorp’s Contract with the Vendor.

PacifiCorp can only provide demonstrations to parties of the proprietary models in a highly confidential setting at the Company’s offices, and PacifiCorp understands that this type of limitation is not unique to PacifiCorp or its vendor. In fact, it appears that this is a standard limitation placed by vendors to protect their proprietary models used in natural gas and electric planning. REC claims that PacifiCorp could have or should have entered into a different type of contract for proprietary models and that this “is a problem of PacifiCorp’s own creation.”²¹ REC even supposes that PacifiCorp intentionally worked—presumably with the vendor—to make access costly for intervenors with the hopes of limiting access to its models.²² Even a very basic understanding of these types of proprietary models used in IRP planning shows that this is simply not true.

PacifiCorp uses the System Optimizer and PaR models for its IRP, and these proprietary models are subject to standard restrictions by the vendor. There are a limited number of planning tools that PacifiCorp could use to optimize its six-state system, and PacifiCorp contracts with ABB, formerly Ventyx, for its modeling software. PacifiCorp is generally aware that other utilities are similarly unable to grant access to their proprietary models to Commission staff or intervenors and that interested parties must purchase software licenses to receive independent access. This appears to be a standard limitation for these proprietary models.

²⁰ *Id.* at 15.

²¹ *Id.* at 14.

²² *See id.* at 15.

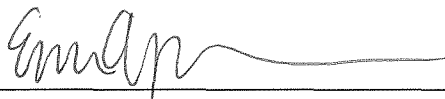
3. The Proprietary Models Used by PacifiCorp in its IRP Modeling are Highly Confidential.

The System Optimizer and PaR models are highly confidential because they contain unique algorithms, methods, techniques and modeling processes. As discussed above, the Company's contract with the vendor limits its ability to share the modeling software with third parties due to the proprietary nature of this software.

IV. CONCLUSION

For the foregoing reasons, PacifiCorp respectfully requests that the Commission deny REC's Motion to Compel.

Respectfully submitted this 7th day of November, 2016.

By: 

Erin Apperson
Legal Counsel
PacifiCorp d/b/a Pacific Power