BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

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

I. INTRODUCTION

Pursuant to OAR 860-001-0110, the Community Renewable Energy Association ("CREA") and Renewable Energy Coalition ("Coalition") (jointly, "Joint QF Parties") respectfully 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" or "OPUC"). The Commission opened this contested case for the express purpose of providing the Joint QF Parties and others an opportunity to vet the data used to support the 2028 sufficiency/deficiency demarcation dates for PacifiCorp's renewable and non-renewable rates. The November 18 Ruling denies the Joint QF Parties the opportunity to access data uniquely within PacifiCorp's control which is highly relevant to the 2028 demarcation dates. Thus, the Joint QF Parties submit that good cause exists for certification. Attachment 1 includes the pleadings and communications leading up to this dispute.

The November 18 Ruling allows PacifiCorp to exclude other parties' use of the computer model chosen by PacifiCorp to generate sufficiency/deficiency demarcation dates in its Integrated Resource Plan ("IRP") and avoided cost rates – in direct contradiction to existing

Commission policy on access to such models used by utilities in regulatory proceedings. Under this new evidentiary standard, PacifiCorp will be the only party able to present certain evidence supported by the model. The widespread implication of this precedent for Commission proceedings warrants certification and Commission resolution at this time.

II. SUMMARY OF DISPUTE

The background of this proceeding has been outlined in great detail in both the previous request for certification and the motion for clarification recently filed by the Joint QF Parties and will therefore not be repeated here. Critical to this request for certification, however, in Order No. 16-307, the Commission set a broad scope for this proceeding, directing that "an expedited contested case proceeding shall be opened to allow a more thorough vetting of the issues raised in this proceeding[, docket UM 1729,] *and* possible revision to Schedule 37 avoided cost prices on a prospective basis."[1] In reliance on that order, the Joint QF Parties retained an expert witness to address important elements of PacifiCorp's avoided costs, including out-dated assumptions in PacifiCorp's 2015 IRP in light of Senate Bill ("SB") 1547 and other recent events that directly impact the renewable and non-renewable resource deficiency dates.

This particular request for certification centers around a motion to compel discovery filed on October 31, 2016 involving the Coalition's discovery requests for additional model runs from PacifiCorp's IRP System Optimizer model ("SO model") and the Planning and Risk ("PaR") model to vet PacifiCorp's IPR inputs and assumptions and determine whether the 2028 demarcation date selected by the Commission was accurate. In Coalition Data Request Nos. 1.2

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

and 1.3, the Coalition asked PacifiCorp to update Table 8.1 from its IRP to reflect the new renewable portfolio standard requirements from SB 1547 and the coal-plant closures announced by PacifiCorp after its IRP process had concluded. Alternatively, in Coalition Data Request No. 1.4, the Coalition also requested copies of the models themselves.

The November 18 ruling denied access to both the additional model runs and the models themselves. It states that the additional model runs requested by the Coalition "fail to meet the tests of relevancy required by Rule 36(B) (1) of the ORCP" because "the data would consist of conflating information from two different time periods . . . ." It also denies access to the models because "[a] contractual impediment exists to the sharing of the proprietary computer models by the company with the Coalition." The rationale of the November 18 Ruling does not comport with the Commission's rules for discovery, impairs the ability of the Joint QF Parties to present relevant arguments in response to PacifiCorp's arguments, and is contrary to the public interest.

III. ARGUMENT

The November 18 Ruling's denial of use of PacifiCorp's IRP models has several legal errors. First, it appears to rely upon Commission staff ("Staff") recommendations to determine the scope of this proceeding rather than applying the correct legal standard for relevance. Second, it seems to impose a new "consistent set of data and methodology" standard for determining relevant evidence in this proceeding. Finally, it suggests PacifiCorp's contractual arrangements regarding its use of its chosen computer model provide a privilege or excuse to withhold relevant discovery materials that might be produced by those models.

1. The Legal Standard for Relevant Evidence Favors Providing Too Much

In this contested case proceeding, discovery is a matter of right. Parties are entitled to discovery of any unprivileged document that is relevant to a claim or defense of either party.[2] Evidence is relevant if it either tends to make the existence of any fact at issue more or less probable than it would be without that evidence, and must be of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.[3] Evidence sought need not be admissible, if it is reasonably calculated to lead to the discovery of admissible evidence.

Additionally, although the Commission's discovery rules for contested case proceedings generally prohibit unduly burdensome discovery, those rules expressly permit the development of information or the preparation of a study for another party where "the capability to prepare the study is possessed uniquely by the party from whom discovery is sought."[4] Finally, the Commission expects parties to err "on the side of producing too much information . . . rather than too little."[5]

Parties may appeal to the Commission within 15 days of an ALJ ruling by requesting the ALJ certify the ruling for the Commission's consideration.[6] The ALJ must certify the ruling if it may result in substantial detriment to the public interest or undue prejudice to a party or if "good cause exists for certification."[7]

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2 ORCP 36(B).
3 OAR 860-001-0450.
4 OAR 860-001-0500(4).
5 Re Portland General Electric Co., Docket No. UE 196, Order No. 09-046 at 8 (Feb. 5, 2009).
6 OAR 860-001-0110.
7 Id.

2. The Commission Established This Proceeding to Vet PacifiCorp's Avoided Cost Prices, Which Naturally Includes Additional Runs of the Models that Generate Major Components of the Avoided Costs

Order No. 16-307 directed "an expedited contested case proceeding shall be opened to allow a more thorough vetting of the issues raised in this [UM 1729] proceeding and possible revisions to Schedule 37 avoided cost prices on a prospective basis." As such, the scope of this case necessarily includes determining whether PacifiCorp's inputs and assumptions require a revision to PacifiCorp's sufficiency/deficiency demarcation dates, which could affect avoided cost prices going forward. Thus, all of the issues raised in the earlier UM 1729 proceeding that led to the Commission's selection of a 2028 sufficiency date, as well as any other issues relating to possible revisions to PacifiCorp's current avoided cost prices, which parties have not yet had the procedural opportunity to vet, should be squarely within the scope of the current proceeding. Yet the November 18 Ruling appears to find even the largest issues raised in the UM 1729 proceeding as being irrelevant.

For example, perhaps the largest issue addressed in UM 1729 was how the inputs and assumptions used during PacifiCorp's IRP, and, critically, the events occurring after acknowledgement of the IRP, should affect PacifiCorp's renewable sufficiency/deficiency demarcation date. The demarcation date is the most significant criterion in determining PacifiCorp's avoided cost prices.[8] Staff, the Commissioners, and parties all discussed in UM 1729 when (and not whether) parties should be permitted to challenge the particular inputs and assumptions used in PacifiCorp's 2015 IRP to determine its demarcation dates.

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[8] PacifiCorp's most recent avoided cost filings drastically reduced its avoided cost pricing, due to the notion that PacifiCorp does not intend to acquire resources until 2028.

At the public meeting that resulted in Order No. 16-307, the Commission struggled to determine accurate sufficiency/deficiency demarcation dates.[9] Staff recommended setting the renewable demarcation date at 2018 based on the fact that PacifiCorp had issued the 2016 Renewable RFPs. PacifiCorp argued that the 2015 IRP showed no need for a renewable resources and that the results of its 2016 Renewable RFPs supported that conclusion. The Commission ultimately selected 2028 for renewables, based upon how long PacifiCorp's current renewable energy certificate bank would last given SB 1547's increased RPS requirements, and simultaneously directed this proceeding be opened to permit additional vetting of these issues. In other words, the Commission revised PacifiCorp's renewable sufficiency date based on post-2015 IRP information, but wanted a more thorough vetting regarding whether the 2028 dates are correct.

In the context of this proceeding, PacifiCorp's IRP model runs are relevant to vetting PacifiCorp's proposed demarcation date because the IRP models produce the demarcation dates and are the basis for PacifiCorp's recommended dates. PacifiCorp has chosen to use these models in the IRP as the basis to set the demarcation dates for the next major resource; the models and outputs they generate are therefore a per se relevant topic for discovery. One obvious way to test whether PacifiCorp's demarcation dates are accurate is to make different assumptions from those used by PacifiCorp, based on more recent information like the passage of SB 1547, and see what demarcation dates the IRP models generate.

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[9] Commissioner Savage explained, "I'll be honest, I'm struggling with the sufficiency/deficiency date. I don't believe its twenty-never and I don't believe its 2018." Commissioner Bloom immediately replied, "I don't either." Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Public Meeting at 1:20:20 (Aug. 16 2016).

The November 18 Ruling, however, appears to rely upon Staff's recommendation to the Commission at the August 16, 2016 public meeting to conclude that additional model runs are not relevant to vetting the deficiency dates. It states,

> The Commission adopted the Staff's recommendation which provided for a more thorough vetting of the company's avoided cost filing to the updated renewable resource deficiency period and the three factors required by the annual May 1 updates. That vetting should be done in a manner that provides for a consistent set of data and methodology. I find that the data requests of the Coalition are unduly burdensome given the nature of this proceeding and, because the data would consist of conflating information from two different time periods, fail to meet the test of relevancy required by Rule 36(B) (1) of the ORCP.[10]

Upon first glance, it appears that the November 18 Ruling concludes that the Coalition's requests are unduly burdensome, but a close reading reveals the ruling's conclusion that the model runs are irrelevant because they "would consist of conflating information from two different time periods" instead. That conclusion ignores the very purpose of this proceeding as well as the Commission's own process in conflating information from different time periods when determining the 2028 demarcation dates in current rates.

Even more troubling, the November 18 Ruling implicitly limits the scope of the proceeding altogether. The ruling appears to impose a new "consistent set of data and methodology" standard for determining relevant evidence for vetting. And this standard appears to limit the scope of issues previously raised in UM 1729 about the reasonableness of PacifiCorp's inputs and assumptions. For this reason, the Joint QF Parties submit that excluding PacifiCorp's model runs will result in substantial detriment to the public interest and undue prejudice to all QFs that wish to sell power to PacifiCorp.

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[10] November 18 Ruling at 2.

3. The November 18th Ruling Erroneously Concludes that Additional Model Runs are Irrelevant and Changes Cannot Be Made to Account for Recent Events.

As noted above, the November 18 Ruling suggests that a party may not recommend changes to the outcome of the 2015 IRP unless that party somehow avoids "conflating information from two different time periods."[11] This suggests that any additional model runs obtained by the Joint QF parties may be outside the scope of this proceeding. Taken to its logical extreme, the limitation against "conflating information from two different time periods" would require a whole new IRP Update be completed in order to recommend any changes be made to discrete elements of the IRP. Unless the scope of the proceeding is merely to "check the math" and verify that the IRP inputs and assumptions used in the 2015 IRP are the same as being used in this case, information from different times periods must be conflated. The Commission opened this docket to provide parties with the ability to recommend discrete changes to the inputs and assumptions from the 2015 IRP in order to actually vet PacifiCorp's data and assumptions underlying the avoided costs.

The November 18 Ruling's new evidentiary requirement that changes must not "conflate information" is contrary to the Commission's own reasoning supporting Order No. 16-307. The Commission started with information from PacifiCorp's acknowledged IRP, then added information from SB 1547 and the 2016 Renewable RFP as well as Staff's Memorandum, PacifiCorp's Supplemental Application, and PacifiCorp's entirely new position argued at the August 16 public meeting to set the current avoided cost rates. The current avoided cost rates are a conflation of information from numerous time periods. PacifiCorp itself has proposed to

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[11] Id.

conflate information from even more time periods when it proposed in its direct testimony to use some inputs and assumptions from the acknowledged 2015 IRP, but different ones based on the 2015 IRP Update—all of which the Company has argued are supported by the 2016 Renewable RFP.

The Joint QF Parties likewise intend to rely upon facts from a different time period than the 2015 IRP, that have not yet been fully presented to the Commission for review. The purpose of which is to ascertain what PacifiCorp's renewable and non-renewable sufficiency-deficiency demarcations would be if more reasonable and accurate assumptions were used (like assuming compliance with SB 1547). In short, the Company's currently effective rates include conflated time periods (as ordered by the Commission), PacifiCorp has proposed even more conflating of time periods in its opening testimony, and there is simply no way for the Joint QF Parties to respond and vet PacifiCorp's avoided cost rates without also conflating different time periods.

4. Due Process, the Rules of Evidence, and Fundamental Fairness Support Providing Either the Additional Model Runs or Access to the Models

Pursuant to OAR 860-001-0500(4), the additional model runs requested by the Coalition are not unduly burdensome because PacifiCorp has special expertise in running its own computer models. By refusing to allow the Coalition meaningful access to its models, PacifiCorp solidifies its own unique capability to prepare the specific model runs requested. Although the Coalition has offered to tailor its requests and work with PacifiCorp to reduce any work associated with preparing model runs, PacifiCorp has been unwilling to discuss running even a single additional model run. The Commission should not incentivize PacifiCorp to exaggerate any potential burdens as a means to avoid producing highly relevant discovery materials.

PacifiCorp suggested that the Coalition request that model runs be performed in its 2017 IRP process instead of this proceeding that sets actual rates that will be paid to QFs. PacifiCorp's alleged willingness to run the model in the IRP, but not now, demonstrates the Company's priorities, which should not form the basis of denying the Joint QF Parties an opportunity to develop evidence to support their positions.

Moreover, the Commission has already provided clear guidance on computer models that is applicable here. In considering third-party data development, the Commission has explained, "it is contrary to the public interest to require parties to Commission proceedings (and potentially the Commission itself) to pay for discovery."[12] To that end, the Commission has already required PacifiCorp itself to provide large QFs access to its GRID model, which is used to calculate non-standard avoided cost prices.[13] Similarly, intervenors are frequently provided free access to utility power cost models that are used to set retail electric rates. Because the November Ruling permits PacifiCorp to create a barrier to discovery, which the Commission has already determined to be contrary to the public interest, certification is warranted.

The Joint QF Parties note that PacifiCorp's licensing agreements or "arrangements" are self-serving and do not provide a legal basis to avoid producing relevant discovery material. This "problem" is entirely of PacifiCorp's own making and should not prejudice the Joint QF Parties. PacifiCorp contradicts its licensing agreement argument by offering to allow highly confidential "safe room" access to the models, which is a practical impossibility for the Joint QF

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12 Re Qwest Corp., Investigation to Review Costs and Establish Prices for Certain Unbundled Network Elements provided by Qwest Corp., Docket No. UM 1025, Order No. 03-533, at 9-10 (Aug. 28, 2003).

13 Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 2 (May 13, 2016) (directing PacifiCorp to "open access to its production cost model (GRID) and provide training and technical assistance upon request.").

Parties' Massachusetts based consultant.[14] PacifiCorp has offered no justification for treating its models as highly confidential in this proceeding and not in others.

In addition, it is not clear why the November 18 Ruling suggests the Joint QF Parties "seek changes in Commission policy with respect to making avoided cost calculation models generally available to QFs, rather than seeking to compel that action in a limited proceeding and in violation of existing contractual agreements." The Joint QF Parties never imagined that they would not be provided meaningful access to computer models used to set rates, and could not have raised this issue in a previous generic proceeding. If the issue of access to models is moved to a generic proceeding in the future, then it would for all practical purposes mean that the Joint QF Parties could not use this evidence in this proceeding.

If PacifiCorp cannot provide foundational evidence to support its own model results, it should not be allowed to use the models or any information from its IRPs in this case. The Joint QF Parties have consistently argued that PacifiCorp's inputs should include carbon-limiting regulations (like SB 1547) and increased coal-plant closures (like Naughton 2 in 2018 and Cholla 4 in 2025) in the Company's IRPs.[15] PacifiCorp chose to ignore those comments and the Joint QF Parties' recommendations, did not include any such inputs or assumptions in its 2015 IRP, and chose not to seek acknowledgement of its more recent 2015 IRP Update filing. Now that SB

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14 The Joint QF Parties may be willing to have their consultant fly to Portland, and spend days working out of PacifiCorp's offices if the Company's shareholders pick up the costs associated with their decision to enter into contractual arrangements limiting access to its models.

15 The Coalition commented in PacifiCorp's 2015 IRP that PacifiCorp should have accounted for more rigorous environmental restrictions, the closure of more coal plants, and lower levels of short-term firm purchases. Re PacifiCorp 2015 IRP, Docket No. LC 62, Coalition Comments at 4-5 (Aug. 27, 2015); Re PacifiCorp 2015 IRP, Docket No. LC 62, Public Meeting at 1:23 (Dec. 17, 2015).

1547 has passed and PacifiCorp has announced the closures of more than 700 MW of coal-plant generation, it is fundamentally unfair to allow PacifiCorp to rely on complex (and outdated) computer modeling without providing full transparency into what results that model would produce with more accurate inputs and assumptions. PacifiCorp will have effectively prevented the Joint QF Parties from making their case in the IRP, and then again barred them from developing evidence now, which effectively allows PacifiCorp to control what evidence other parties (but not itself) can use.

IV. 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 30th day of November, 2016.

RICHARDSON ADAMS, PLLC

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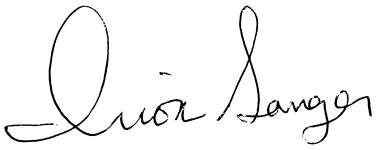

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Attachment 1

1- Coalition's Motion to Compel, filed October 31, 2016 (including Attachment A)

2- PacifiCorp's Response, filed November 7, 2016

3- Coalition's Reply, filed November 10, 2016

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1794

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

I. INTRODUCTION

The Renewable Energy Coalition (the "Coalition") files this motion to compel discovery, respectfully requesting that the Oregon Public Utility Commission (the "Commission" or "OPUC") Administrative Law Judge ("ALJ") Allan Arlow require PacifiCorp to either provide the Coalition a copy of the integrated resource plan ("IRP") models or to perform the specific IRP model runs the Coalition requested in Data Requests ("DRs") 1.2, 1.3, and 1.4. If ALJ Arlow grants this motion, then the Coalition remains willing to work with PacifiCorp to reduce any burdens associated with performing any specific model runs.

The Coalition requests expedited consideration of this motion and has conferred with PacifiCorp accordingly. In recognition that the deadline to file testimony (November 18) is rapidly approaching, the Coalition and PacifiCorp have agreed to shorten the response period to seven days (due November 7) and the reply period to three (due November 10) for this motion. Given this and other discovery disputes, the Coalition is likely to request that the current scheduled be extended, but would like to ensure that any delays are as limited as possible.

Pursuant to OAR 860-001-0420 and 860-001-0500, the Coalition has made a good faith effort to confer and resolve this discovery dispute related to this first set of DRs (due on October 17, 2016). On October 17, 2016 PacifiCorp sent incomplete responses and objections to the Coalition's first set of DRs. Over the next two weeks and prior to October 26, 2016, the Coalition's counsel and PacifiCorp's counsel had discussed the Coalition's first set of DRs and were unable to resolve their differences. After unsuccessfully exchanging phone messages, on October 26, 2016, the Coalition's counsel notified PacifiCorp via email that the Coalition intended to file a motion to compel. After several subsequent emails back and forth, PacifiCorp's counsel confirmed that PacifiCorp was unwilling to provide the information requested in DRs 1.2., 1.3., and 1.4. Attachment A includes copies of electronic communications between counsel attempting to resolve this dispute.

The Coalition's position in both UM 1729 and this proceeding is that PacifiCorp's avoided cost rates and the IRP assumptions were inaccurate when they were filed and believes they are wildly inaccurate given the subsequent passage of SB 1547 and PacifiCorp's announcements that it would be retiring two coal plants early. PacifiCorp chose not to seek acknowledgment of its 2015 IRP Update and instead asked the Commission to look back to its original 2015 IRP filing to set the demarcation of the sufficiency/deficiency periods. That filing was acknowledged by the Commission, but neither it nor the 2015 IRP Update have ever been vetted and reflect nothing more than PacifiCorp's estimates. Should ALJ Arlow permit PacifiCorp to avoid providing complete responses to the Coalition's data requests, then PacifiCorp's data inputs and assumptions in its 2015 IRP and IRP Update may never be vetted.

II. BACKGROUND

In Order No. 16-307, the Commission ordered PacifiCorp to file new avoided cost prices based on renewable and non-renewable deficiency periods beginning in 2028, and the cost and performance data from its (acknowledged) 2015 IRP rather than its (unacknowledged) 2015 IRP Update. Among other things, the Coalition and other parties challenged whether PacifiCorp's proposed renewable and non-renewable dates of deficiency were correct based on allegations that both PacifiCorp's 2015 IRP's and IRP Update's inputs and assumptions were inaccurate or unreasonable.[1] In addressing due process concerns raised by the parties, the Commission acknowledged that parties had not had an opportunity to vet the data relied upon in either the 2015 IRP or the 2015 IRP Update filed by PacifiCorp.[2] Order No. 16-307 also directed an expedited contested case proceeding be opened 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."[3] Thus, one of the key issues that should be vetted is the Coalition's claim that the dates of renewable and non-renewable deficiency should be changed based on more reasonable and accurate inputs and assumptions.

The DRs at issue in this motion are part of the expedited contested case proceeding ordered by the Commission. The Coalition seeks additional computer model

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1 Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Joint QF Parties' Comments at 5, 11 (July 1, 2016).

2 Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Public Meeting at 1:26:52 (Aug. 16, 2016).

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

runs to vet PacifiCorp's 2015 IRP data based on what the Coalition believes to be more reasonable and accurate inputs and assumptions. Specifically, the Coalition seeks information from PacifiCorp's IRP System Optimizer model ("SO model") and the Planning and Risk ("PaR") model and copies of models themselves that PacifiCorp has used to calculate the next dates of deficiency. PacifiCorp refuses to provide the specific model runs requested by the Coalition. Additionally, PacifiCorp refuses to provide the Coalition access to the models themselves, absent unreasonable conditions. At this point, the Coalition is willing to either access the models themselves, or rely upon PacifiCorp performing limited and narrow model runs.

III. LEGAL STANDARD

In a proceeding before the Commission, discovery is a matter of right, and the Commission follows the Oregon court rules of discovery, to the extent not inconsistent with the Commission's administrative rules.[4] Under the Oregon Rules of Civil Procedure ("ORCP"), a party is entitled to discovery of any document that is relevant to a claim or defense.[5] Specifically, "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."[6] Relevant evidence must: 1) tend to make the existence of any fact at issue in the proceedings more or less probable than it would be without the

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4 OAR 860-001-0000(1); OAR 860-001-0500; Re Pacific Power & Light, dba PacifiCorp, Docket No. UE 177, Order No. 08-003 at 2 (Jan. 4, 2008); Re Portland General Elec. Co., OPUC Docket No. UE 102, Order No. 98-294 at 3 (July 16, 1998) ("[d]iscovery is a right afforded to parties in a legal proceeding by our rules and by the Oregon Rules of Civil Procedure, which we follow except where our rules differ.").

5 ORCP 36(B).

6 Id.

evidence; and 2) be of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.[7]

In addition, although the Commission's discovery rules in contested case proceedings generally prohibit unduly burdensome discovery, those rules expressly permit the development of information or preparation of a study for another party where "the capability to prepare the study is possessed uniquely by the party from whom discovery is sought."[8] Finally, "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence."[9] The Oregon courts and the Commission have affirmed that the information sought need not be admissible itself, as long as it is reasonably calculated to lead to the discovery of admissible evidence.[10]

A party may move to compel production under ORCP 46 if the opposing party is not responsive to the discovery request. On a motion to compel, "an evasive or incomplete answer is to be treated as a failure to answer."[11] The Commission expects parties to err "on the side of producing too much information . . . rather than too little."[12]

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7 OAR 860-001-0450.
8 OAR 860-001-0500(4).
9 ORCP 36(B).
10 Baker v. English, 324 Or. 585, 588 n.3 (1997); Re Portland Extended Area Service Region, OPUC Docket No. UM 261, Order No. 91-958 at 5 (July 31, 1991).
11 ORCP 46A(3).
12 Re Portland General Electric Co., Docket No. UE 196, Order No. 09-046 at 8 (Feb. 5, 2009).

IV. ARGUMENT

1. Additional Model Runs are Relevant, Because PacifiCorp's IRP Assumptions Have Never Been Verified in a Contested Case Proceeding

The Coalition has requested that PacifiCorp run additional SO and PaR models to investigate key issues in this case regarding the data inputs and assumptions used to determine PacifiCorp's current avoided cost rates, which are based upon its original 2015 IRP filing. These DRs may allow the Coalition to identify that PacifiCorp's assumptions, which are used to set rates, are in fact incorrect or outdated, and new rates should be established.

Relevant Coalition DRs include 1.2 and 1.3. Coalition DR 1.2 requested that PacifiCorp update Table 8.1 of its 2015 IRP and 2015 IRP Update to reflect both SB 1547's increased RPS requirements and the recently announced retirements of Naughton 3 in 2018 and Cholla 4 in 2025.[13] Coalition DR 1.3 requested PacifiCorp update Table 8.1 of its IRP to include SB 1547's increased RPS requirements, the recently announced retirements of Naughton and Cholla, and a cap on the amount of front office transactions at 13 percent for all new energy resources.[14]

PacifiCorp objected to the Coalition DRs 1.2 and 1.3 as being overly broad, unduly burdensome, and not reasonably calculated to the discovery of admissible evidence.[15] Additionally, PacifiCorp claimed that it did not have the data requested and that the Coalition's DRs require PacifiCorp to run additional sensitivities from its 2015 IRP.

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13 Attachment A at 8.
14 Id. at 9.
15 Id. at 8 and 9.

The Commission has consistently maintained that parties have the right to challenge the inputs and assumptions used to set a utility's avoided cost rates.[16] The Commission has even "*encouraged* parties to seek suspension of an avoided cost filing when necessary to address concerns about natural gas forecasts, or any other aspect of a utility's filing."[17] This expedited contested case proceeding underscores the Commission's direction to permit interested parties the opportunity to review and challenge the utility's inputs and assumptions.

The additional modeling is relevant to test the Coalition's claims in the non-contested case predecessor to this docket, which are the issues that are to be vetted now. The key issue in the previous, and this proceeding, is whether the estimated resource sufficiency/deficiency period dates that resulted from PacifiCorp's preferred portfolio in its IRP should be changed. One way to determine if those dates are accurate is to make different assumptions regarding resource operations and regulations, and then see what dates the IRP models estimate will be the dates for PacifiCorp's next thermal and renewable resource acquisitions.

Some of PacifiCorp's assumptions in its 2015 IRP were unreasonable at the time PacifiCorp selected its preferred portfolio. For example, the Coalition identified key

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16 Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 12 (Feb. 24, 2014) (all inputs and assumptions should initially be drawn from the IRP); Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 36-37 (May 13, 2005) (gas price forecasts); Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 06-538 at 44 (Sept. 20, 2006) (gas price forecasts); Re Investigation into determination of resource sufficiency, pursuant to Order No. 06-538, UM 1396, Order No. 10-488 at 8 (Dec. 22, 2010) (resource sufficiency/deficiency).

17 Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 06-538 at 44 (Sept. 20, 2006) (emphasis added).

assumptions that were inaccurate at the time PacifiCorp developed its 2015 IRP (excessive reliance on short-term contracts, inaccurate assumptions regarding coal plant operations, etc.).[18] The Coalition also pointed out that PacifiCorp's next planned thermal and renewable resources did not receive any substantive review in the IRP process, in part because PacifiCorp's estimates were outside of the company's action plan period.[19] As such, PacifiCorp's IRP and the Commission's order acknowledging it did not address the issues of the specific year PacifiCorp must acquire its next major renewable and non-renewable generation resources.

Even assuming *arguendo* that the conclusions from the IRP were reasonable at the time, they are clearly outdated and inaccurate now in light of SB 1547's increased RPS requirement and PacifiCorp's subsequent announcements that it will be retiring Naughton 3 in 2018 and Cholla 4 in 2025.[20] PacifiCorp also demonstrated a desire to obtain renewable resources when it issued its renewable resource request for proposals in 2016, despite its stated intention in the QF proceedings of obtaining resources in what Commissioner Savage described as "20-never".[21]

PacifiCorp's lack of transparency violates due process, the rules of evidence, and fundamental fairness. A utility should not be allowed to rely on complex computer

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

19 Id. at 1.

20 PacifiCorp is likely to continue to retiring coal plants ahead of schedule, and other coal plants are similarly like to shut down, including at least some of the Washington Colstrip units and the Rio Tinto Kennecott units. See: Robert Walton, Utah Regulators approve shuttering Kennecott's 3 coal units ahead of schedule (Oct. 31, 2016) available at: http://www.utilitydive.com/news/utah-regulators-approve-shuttering-kennecotts-3-coal-units-ahead-of-schedu/429370/.

21 Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Public Meeting at 1:20:20 (Aug. 16, 2016).

modeling without providing full transparency into that model, so parties can see how it works. ALJ Arlow should order PacifiCorp to provide full and transparent access to its SO and PaR models as well as its input and output data used in its 2015 IRP. Alternatively, if PacifiCorp cannot produce foundational evidence to support its model results, then it should not be allowed to use the model going forward. PacifiCorp cannot be allowed to rely on complex computer modeling results if it does not make the modeling available to interested parties.

The Coalition has consistently requested the opportunity to challenge and obtain Commission resolution of the date of renewable and non-renewable resource deficiency and the assumptions that PacifiCorp used to assume that it would not acquire a thermal resource until 2028 and that it would not acquire a renewable resource until more than 20 years. Now that Order No. 16-307 has provided the Coalition that opportunity, PacifiCorp has refused to permit the Coalition the opportunity to *actually* vet its data inputs and assumptions.

In short, the Coalition argues that PacifiCorp's assumptions have not been vetted and may not be accurate. It is reasonable to conclude that additional model runs would help vet PacifiCorp's data, as directed by the Commission, and determine whether PacifiCorp's claims are accurate. Thus, the information the Coalition is seeking is highly relevant in this proceeding.

2. PacifiCorp Has Special Expertise Running its Own Computer Models

The fundamental question in this Motion is whether PacifiCorp should be allowed to avoid producing material within its possession – or within its unique position to produce. PacifiCorp contends that the Coalition's requests to update Table 8.1 are

unduly burdensome, but ignores the fact that it has a unique capability to develop the information requested. The Commission's discovery rules direct parties with special expertise to help "develop information" for the record and even permit requiring a party with special expertise to "prepare a study for another party."[22]

PacifiCorp agrees that it has special expertise to run its models, but argues that: "[t]he opportunity for parties to influence PacifiCorp's model runs is in the Company's IRP process, not in a separate proceeding after the IRP is completed. In fact, PacifiCorp is currently engaged in its 2017 IRP public input process."[23] PacifiCorp appears to implicitly agree that it routinely performs additional model runs for parties in its IRP cases; however, the Company now objects to performing the same actions when the rubber hits the road and the IRP will be used to set actual rates rather than as a planning tool.

This argument fails for two reasons. First, these additional model runs that more accurately reflect PacifiCorp's resource needs should have been done by PacifiCorp when it made its 2015 IRP filings. For example, in PacifiCorp's 2015 IRP, the Coalition argued that PacifiCorp should have accounted for lower levels of short-term firm purchases, more rigorous environmental restrictions, and the closure of more coal plants.[24] This illustrates the reality that everyone is aware of: the Coalition has no control over what model runs PacifiCorp decides to perform. Had PacifiCorp been more

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22 OAR 860-001-0500(4).

23 Attachment A at 3.

24 Re PacifiCorp 2015 IRP, Docket No. LC 62, Coalition Comments at 4-5 (Aug. 27, 2015); Re PacifiCorp 2015 IRP, Docket No. LC 62, Public Meeting at 1:23 (Dec. 17, 2015).

accurate originally and performed model runs based on the Coalition's positions in the 2015 IRP, then it may not have needed to do additional modeling in this proceeding.

Second, PacifiCorp's suggestion that testing how the IRP model would produce different dates of deficiency with different assumptions in the ongoing 2017 IRP proceeding would be too late and useless for the purposes of this proceeding. The 2017 IRP will not be filed for over a year, while the final order in this case is scheduled for April 14, 2017. The Commission has already concluded that this proceeding, which is after the 2015 IRP, is the time to challenge and test PacifiCorp's IRP assumptions.

PacifiCorp also claims that the Coalition's requests are unduly burdensome and should be rejected because the Coalition has not sought to work out less burdensome model runs with the Company. PacifiCorp claims that the Coalition's "request would require PacifiCorp's IRP staff to work on nothing but rerunning the 2015 IRP and 2015 IRP Update for at least an entire month, if not longer. This is unduly burdensome and simply not possible."[25] In response, the Coalition was (and remains) willing to work with PacifiCorp and narrow its request to reduce the Company's burden.[26] PacifiCorp, however, refused and is unwilling to do any model runs for the Coalition.

As described above, the information requested is highly relevant to the issues in this proceeding and PacifiCorp has special expertise in developing it. Thus, OAR 860-001-0500 directs PacifiCorp to provide the information requested by the Coalition.

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25 Attachment A at 5.

26 Id. at 3-4.

3. PacifiCorp's IRP Information is Not Highly Confidential

PacifiCorp expressed willingness to allow the Coalition to have access to its IRP model, but only at the PacifiCorp offices and under highly confidential protections.[27] As the Coalition's counsel explained by email on October 26, 2016, this is not a practical option for the Coalition and would be cost prohibitive. The Coalition's expert witnesses are not located in Portland and the Coalition is therefore not able to accommodate PacifiCorp's request.

PacifiCorp has not explained what specific information in its IRP model is highly confidential, so it is difficult for the Coalition to rebut any such claims. The Coalition, however, is aware that parties are routinely granted access to PacifiCorp's computer models and confidential data, and restricting access to review at the Company's offices is an extreme remedy. For example, PacifiCorp's GRID model – which is used to estimate power costs, set direct access transition adjustment charges and credits, and set some avoided cost rates – is provided free of charge, along with free training.[28]

The Coalition is unaware of parties being required to camp out in a utility's offices for days to run models, and requiring parties to view any information on site is an extremely rare remedy. For example, in Order No. 06-033, the Commission modified the its protective order process to create a "safe-room" discovery mechanism.[29] The safe room review was established to accommodate stakeholder review of "highly

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27 Id. at 6.

28 E.g., Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 2 (May 13, 2016) (directing PacifiCorp to "open access to its production cost model (GRID) and provide training and technical assistance upon request.").

29 Re PacifiCorp, PGE, NW Natural, and Avista Filing of Tariffs Establishing Adjustment Clauses Under the Terms of SB 408, Docket No. UE 177, Order No. 06-033 at 5 (Jan. 25, 2006).

confidential" tax documents pursuant to SB 408. The Commission specifically chose to "emphasize that the circumstances surrounding this request are unique, and that this order should not be used as general precedent in support of the use of a safe-room discovery mechanism."[30] PacifiCorp's offer to allow the Coalition to run models in PacifiCorp's office seems to conflate the confidentiality of its IRP data assumptions with that of the tax information required by SB 408. There should not be any IRP data assumptions that warrant the extreme remedy of requiring a consultant to move to Portland, and work out of the Company's offices.

Moreover, if PacifiCorp believes it IRP data is worthy of additional protection, then the Company should seek a protective order from the Commission rather than refuse to provide relevant information that has been properly requested by the Coalition. PacifiCorp has made no such filing, which would allow all the parties the opportunity to comment and the ALJ an opportunity to rule on the provisions of any such motion for extreme protections.

4. PacifiCorp's License Agreement or Arrangement with ABB Should Not Permit PacifiCorp to Avoid Providing Relevant Discovery Material

In addition to receiving the specific data runs, the Coalition has requested that PacifiCorp provide access to PacifiCorp's models. The relevant request is Coalition DR 11.4.[31] Coalition DR 1.4 requested complete and working copies of PacifiCorp's IRP SO model and PaR model. PacifiCorp objected to Coalition DR 11.4 by alleging that the model is proprietary software provided to PacifiCorp under a license agreement with its

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30 Id. These special circumstances occurred after confidential documents were leaked to the Willamette Week in a separate proceeding. See: Kristina Brenneman, Legal eagle eyes PGE deal (Jan. 10, 2005) available at: http://portlandtribune.com/component/content/article?id=107655.

31 Attachment A at 10.

vendor, ABB. Additionally, PacifiCorp maintains that "per arrangement with ABB" it can only provide access to the models and documentation at PacifiCorp's offices, but it provided no contract restricting its right to provide the requested information to intervenors through discovery in Commission proceedings. At this point, the Coalition only requests access to the models themselves if the Company does not perform additional runs.

This is a problem of PacifiCorp's own creation, as the Company could have made other arrangements to allow parties in its regulated proceedings access to the models. PacifiCorp made the choice to use these specific models in its IRP, which the Company knew would be used to set avoided cost rates and would be subject to review and challenge by the stakeholders that are directly impacted by those rates. PacifiCorp then failed or refused to take steps to ensure that intervenors would be allowed to gain reasonable access to review and replicate PacifiCorp's alleged modeling as well to produce alternative modeling results with alternative inputs. Absent such a right, PacifiCorp's own self-serving results would always be the only results in the record whenever the question requires use of its model. PacifiCorp should not be permitted to essentially decide to prevent parties from having meaningful access to a self-selected model that addressees the fundamental issues in a regulatory proceeding.

PacifiCorp also suggested the Coalition work directly with its vendor to purchase a license and hire a consultant. The Coalition has contacted PacifiCorp's vendor, who was not able to help the Coalition obtain pricing information or otherwise move forward with this option. The Coalition is also aware that other parties who have separately purchased model licenses have paid about $30,000 for access to the SO model alone. As

explained above, in PacifiCorp's recent transition adjustment mechanism case (UE 307), the Company provided free access to its GRID power cost model. The Industrial Customers of Northwest Utilities submitted an intervenor funding request for about $10,000 to pay for its consultant in the entire case.[32] It appears that PacifiCorp wants the Coalition to pay approximately three times this cost just to gain access to a model to review and challenge the assumptions that will be used to set rates. This option is simply unreasonable and prohibitively expensive, which is one reason the Company may have made arrangements to limit access to its model.

The Commission has considered these issues before and determined that utilities should provide access to proprietary computer modeling. Specifically, the Commission decided utilities "cannot prevent discovery of relevant information central to the outcome of this proceeding simply because they chose to have the data developed by a third party."[33] In addition, the Commission noted, "it is contrary to the public interest to require parties to Commission proceedings (and potentially the Commission itself) to pay for discovery."[34] By suggesting the Coalition purchase its own license to PacifiCorp's computer models, the Company is effectively creating a third-party barrier to relevant data and then requiring parties to pay for the discovery of that data.

In short, PacifiCorp cannot have it both ways and should either provide the specific runs requested, or access to the models themselves. Moreover, PacifiCorp

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32 Re PacifiCorp, dba Pacific Power, 2017 Transition Adjustment Mechanism, Docket No. UE 307, ICNU Request for Issue Fund Grant and Proposal Budget at 5 (May 18, 2016).

33 Re Qwest Corp., Investigation to Review Costs and Establish Prices for Certain Unbundled Network Elements provided by Qwest Corp., Docket No. UM 1025, Order No. 03-533, at 9-10 (Aug. 28, 2003).

34 Id. at 10.

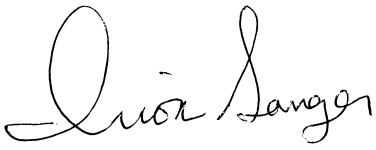
undermines its own argument that the Coalition's data requests are unduly burdensome by offering to allow the Coalition's expert access to the PacifiCorp office to run the models themselves. Furthermore, by suggesting the Commission's safe room access as a reasonable concession, PacifiCorp acknowledges that allowing the Coalition access to the models does not violate its licensing agreement. The Coalition notes that any additional "arrangements" made with ABB to preclude access to PacifiCorp's IRP modeling should augment PacifiCorp's duty to provide the specific mode runs requested.

V. CONCLUSION

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

Dated this 31st day of October, 2016.

Respectfully submitted,



Irion A. Sanger
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Of Attorneys for Renewable Energy Coalition

ATTACHMENT A

From: **Irion Sanger** irion@sanger-law.com
Subject: Re: UM 1794
Date: October 31, 2016 at 11:08 AM
To: Apperson, Erin Erin.Apperson@pacificorp.com
Cc: Sidney Villanueva sidney@sanger-law.com

IS

Erin

Absent unexpected events, our plan is to file the motion to compel today.

Irion Sanger
Sanger Law PC
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Portland, OR 97215

503-756-7533 (tel)
503-334-2235 (fax)
irion@sanger-law.com

From: "Apperson, Erin" <Erin.Apperson@pacificorp.com>
Date: Monday, October 31, 2016 at 11:06 AM
To: Irion Sanger <irion@sanger-law.com>
Cc: Sidney Villanueva <sidney@sanger-law.com>
Subject: RE: UM 1794

Irion – I wanted to clarify that this timing and agreement would be based upon REC filing its motion today.

Erin Apperson
Attorney, Pacific Power
PacifiCorp
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Portland, OR 97232
l503-813-6642 office l503-964-3542 cell
Erin.Apperson@pacificorp.com

From: Apperson, Erin
Sent: Monday, October 31, 2016 11:05 AM
To: 'Irion Sanger'
Cc: Sidney Villanueva
Subject: RE: UM 1794

Irion,

PacifiCorp understands the need to expedite resolution of this discovery dispute. Therefore, PacifiCorp would be willing to shorten its response time from fifteen days to seven days (due Nov. 7) if REC similarly agrees to shorten its reply time from seven days to three days (due Nov. 10).

Erin Apperson
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Erin.Apperson@pacificorp.com

From: Irion Sanger [mailto:irion@sanger-law.com]
Sent: Friday, October 28, 2016 5:14 PM
To: Apperson, Erin
Cc: Sidney Villanueva
Subject: [INTERNET] Re: UM 1794

Erin

I am not sure how running model runs in the 2017 IRP is relevant because they would provide no assistance to REC in this proceeding.

We have contacted ABB, and they were not able to help us in obtaining pricing information or otherwise move forward with this option. We have also inquired with others who have used the

otherwise move forward with this option. We have also inquired with others who have used the model in the past, and our understanding is that it would be cost prohibitive for a party on its own that does not have an existing relationship with the vendor to enter into a separate agreement.

We plan to file a motion to compel on Monday. Please let me know what expedited dates you are willing to agree to.

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From: "Apperson, Erin" <Erin.Apperson@pacificorp.com>
Date: Thursday, October 27, 2016 at 4:18 PM
To: Irion Sanger <irion@sanger-law.com>
Cc: Sidney Villanueva <sidney@sanger-law.com>
Subject: RE: UM 1794

Irion,

PacifiCorp understands REC's position on these requests and maintains its objections to performing the model runs. You have outlined only two of REC's options in your email below, but as PacifiCorp has stated, REC can also pursue the option of working directly with the vendor ABB.

PacifiCorp has an extensive stakeholder process in preparation for its IRP, which includes numerous public input meetings and technical workshops. The opportunity for parties to influence PacifiCorp's model runs is in the Company's IRP process, not in a separate proceeding after the IRP is completed. In fact, PacifiCorp is currently engaged in its 2017 IRP public input process.

Let me know when you would like to discuss timing for next steps.

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Erin.Apperson@pacificorp.com

From: Irion Sanger [mailto:irion@sanger-law.com]
Sent: Thursday, October 27, 2016 1:57 PM
To: Apperson, Erin
Cc: Sidney Villanueva
Subject: [INTERNET] Re: UM 1794

Erin

Thanks for your response.

Without addressing your other points at this time, I wanted to make it clear that REC is willing to work with PacifiCorp to limit the model runs. REC's position is that PacifiCorp cannot rely upon the outputs of a computer model to set rates without either: 1) conducting a reasonable number of model runs to test the outcome of REC's recommendations; or 2) provide access to the model at no cost (other than our internal employee costs to run the model at their place of business). We are willing to try work with PacifiCorp to come up a reasonable number of runs.

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From: "Apperson, Erin" <Erin.Apperson@pacificorp.com>
Date: Wednesday, October 26, 2016 at 1:52 PM
To: Irion Sanger <irion@sanger-law.com>
Cc: Sidney Villanueva <sidney@sanger-law.com>
Subject: RE: UM 1794

Irion,

Thank you for reaching out. You are correct that PacifiCorp stands by its objections to REC Data Request 1.2 and REC 1.3 from its responses sent to REC on October 14 in UM 1794. In REC's Data Requests 1.2 and 1.3, REC asks PacifiCorp to rerun every top performing portfolio from PacifiCorp's 2015 IRP and 2015 IRP Update. Responding to this request would require PacifiCorp's IRP staff to work on nothing but rerunning the 2015 IRP and 2015 IRP Update for at least an entire month, if not longer. This is unduly burdensome and simply not possible. This is even more unreasonable given that PacifiCorp is in the middle of preparing its 2017 IRP and running its stakeholder outreach process.

As PacifiCorp articulated in its response to REC Data Request 1.4, the requested models are proprietary software provided to PacifiCorp under a license with ABB. If REC seeks to rerun numerous portfolios from PacifiCorp's 2015 IRP and 2015 IRP Update, it may pursue the option of working with the vendor to purchase a license and hiring a consultant.

Regarding expedited consideration, PacifiCorp appreciates the need to resolve this discovery dispute quickly and efficiently while giving both parties a reasonable and fair opportunity to present arguments. Depending on when REC files its motion to compel, PacifiCorp could be willing to shorten its response time from fifteen days to eight days if REC similarly agrees to shorten its reply time from seven days to four days. Please let me know when REC intends to file the motion and we can hopefully reach agreement on the appropriate expedited timeframe.

Regarding REC's desire to amend the procedural schedule, it is premature to discuss changes. Any discussion regarding the procedural schedule would necessarily prejudge the outcome of the unresovled discovery disputes in REC's or CREA's favor.

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Erin.Apperson@pacificorp.com

From: Irion Sanger [mailto:irion@sanger-law.com]
Sent: Wednesday, October 26, 2016 7:14 AM
To: Apperson, Erin
Cc: Sidney Villanueva
Subject: [INTERNET] UM 1794

Erin

I am sending this email about the discovery dispute regarding the Renewable Energy Coalition's first set of data requests. We have spoken once on the phone, and traded phone messages. As I understand things, PacifiCorp is not willing to perform IRP model runs for REC, and PacifiCorp is not willing to provide REC a copy of the IRP models. PacifiCorp is willing to allow REC to have access to the model, but only at the PacifiCorp's offices and under highly confidential protections. This is not a practical option for REC and would be cost prohibitive. I would be happy to discuss further with you if there is a possibility of reaching a compromise, but absent either the company running the model or REC gaining practical access to the model, REC intends to file a motion to compel.

REC intends to ask for expedited consideration, and I would like to discuss if we can reach mutually agreeable shortened response dates. Even with shortened response times, I do not believe there will be sufficient time after obtaining an order for REC to complete its testimony. Thus, we are likely to request for an extension of time to file our testimony, the dates would largely be based on when resolution is reached regarding CREA's separate motion to compel, and REC's motion to compel on the models. We also need access to the information CREA is requesting to prepare our testimony. I wanted you to be fully aware of our scheduling plans before you agreed to any expedited consideration.

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PACIFIC POWER
A DIVISION OF PACIFICORP

825 NE Multnomah, Suite 2000
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October 17, 2016

Irion Sanger
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John Lowe
Renewable Energy Coalition
12050 SW Tremont St,
Portland, OR 97225
jravenesanmarcos@yahoo.com

RE: OR Docket No. UM-1794
REC 1st Set Data Request (1-4)

Please find enclosed PacifiCorp's Responses to REC's 1st Set Data Requests 1.1-1.14. Also provided is Attachment REC 1.1.

If you have any questions, please call me at 503-813-6583.

Sincerely,

Natasha Siores

Natasha Siores
Pacific Power Regulation

C.c.: Gregory M. Adams/CREA greg@richardsonandoleary.com

UM 1794 / PacifiCorp
October 17, 2016
REC Data Request 1.2

REC Data Request 1.2

Please refer to PacifiCorp's 2015 integrated resource plan (IRP) Table 8.1 at 182, and IRP Update at 2-3. Please provide an updated Table 8.1 assuming: 1) the increased renewable portfolio standard requirements in SB 1547; and 2) the retirements of Naughton 3 in 2018, and Cholla 4 in 2025. Provide all supporting work papers.

Response to REC Data Request 1.2

PacifiCorp objects to this request as unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and as requiring information not maintained in the normal course of business or development of a special study. Without waiving these objections, the Company responds as follows:

PacifiCorp does not have the data requested in its possession. The information requested would require PacifiCorp to run additional sensitivities from its 2015 integrated resource plan (IRP), which was acknowledged by the Public Utility Commission of Oregon (OPUC) on February 29, 2016.

REC Data Request 1.3

Please refer to PacifiCorp's 2015 integrated resource plan (IRP) Table 8.1 at 182, and IRP Update at 2-3. Please provide an updated Table 8.1 assuming: 1) the increased renewable portfolio standard requirements in SB 1547; 2) the retirements of Naughton 3 in 2018, and the Cholla 4 in 2025; and 3) for each portfolio listed in table 8.1, cap the amount of front office transactions at 13% of all energy from new resources. Provide all supporting work papers.

Response to REC Data Request 1.3

PacifiCorp objects to this request as unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and as requiring information not maintained in the normal course of business or development of a special study. Without waiving these objections, the Company responds as follows:

PacifiCorp does not have the requested data in its possession. The information requested would require PacifiCorp to run additional sensitivities from its 2015 integrated resource plan (IRP), which was acknowledged by the Public Utility Commission of Oregon (OPUC) on February 29, 2016.

UM 1794 / PacifiCorp
October 17, 2016
REC Data Request 1.4

REC Data Request 1.4

Please provide complete and working copies of PacifiCorp's IRP System Optimizer and PaR models.

Response to REC Data Request 1.4

The System Optimizer model (SO Model) and the Planning and Risk (PaR) model are proprietary software provided to PacifiCorp under a license agreement with ABB. The Company can only provide access to the models and documentation at the Company offices on a highly confidential basis per arrangement with ABB. Note: PacifiCorp is using the same software as it has in the past from VENTYX however, VENTYX has since been acquired by ABB.

PACIFIC POWER
A DIVISION OF PACIFICORP

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 in 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 in 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

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.

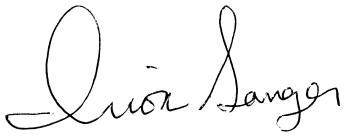
Finally, any contractual obligation binding PacifiCorp to require only highly confidential, in-office access to its computer models is unreasonable and self-serving. PacifiCorp should not be permitted to limit access to its models by requiring parties to be either willing and able to work within PacifiCorp's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