

**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.

RULING

DISPOSITION: MOTION TO COMPEL GRANTED IN PART AND DENIED IN PART

I. BACKGROUND

This proceeding was opened to address a requirement in Order No. 16-307, that PacifiCorp, dba Pacific Power, file an amended Schedule 37 based on, among other things, a renewable resource deficiency period beginning in 2018 and cost and performance data from the acknowledged 2015 Integrated Resource Plan (IRP).

A discovery dispute arose between the Community Renewable Energy Association (CREA) and PacifiCorp. CREA seeks information regarding the 2016 Renewable Request for Proposals (RFP) and internal documents supporting PacifiCorp's ultimate course of action in the RFP (data requests 1.1-1.7); (2) information regarding the assumptions and support for use of a Wyoming wind farm as the proxy resource, as exists in the currently effective avoided cost rates (data requests 1.8-1.9); and (3) information and documents related to the company's need for renewable resources, including allegedly inconsistent statements made to the legislature and documents produced in the ongoing renewable implementation plan docket (data requests 1.10-1.11).

Following an informal conference to address the dispute, I concluded that the information should be provided to CREA, but that it should only be done under such terms as had been agreed to by the parties with respect to modifying the existing protective order, in order to mitigate PacifiCorp's concerns about the disclosure's impact on future RFP processes.

On October 12, 2016, PacifiCorp filed a motion for clarification or, alternatively, certification with respect to the outcome of the informal conference. On October 19, 2016, CREA simultaneously filed a response to the PacifiCorp motion and a motion to compel discovery. PacifiCorp filed its response to CREA's the motion to compel on October 26, 2016. The filing of the motion to compel and the PacifiCorp response indicate that the parties were not able to comply with my informal ruling and that,

pursuant to OAR 860-001-0500(7), the Commission is now being requested to formally rule on the dispute.

II. LEGAL STANDARD

The legal standard for discovery is whether the information sought is relevant to the claim of the party seeking discovery. OAR 860-001-0540 (1) provides that such discovery must be pursuant to the Oregon Rules of Civil Procedure, which, in this case is Rule 36B(1), and that the information sought in discovery must be reasonably calculated to lead to the discovery of admissible evidence.

III. MOTION TO COMPEL

A. Data Requests Seeking information About All bids for Wind Projects in the 2016 Resource RFP (DR 1.1-1.8)

CREA argues that the Commission recognized in Order No. 16-307 that other parties had no opportunity to vet all available data in the 2015 IRP and that the Commission directed that is proceeding “shall be opened to allow a more thorough vetting of the issues raised in this [UM 1729(1)] proceeding and possible revision to Schedule 37 avoided cost prices on a prospective basis.” CREA therefore argues that all potentially relevant information would include information on 2016 RFP and internal documents supporting the company’s ultimate course of action regarding the assumptions and support for use of the Wyoming wind farm as a proxy resource. CREA also contends that the disclosure of RFP bid information at the July 26, 2016 Commission special public meeting, undermines the company’s claim that such information is irrelevant to its avoided cost pricing.

PacifiCorp counters generally by stating that the RFP bid information is outside the scope of the proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. PacifiCorp notes that the company’s March Update was filed with the Commission before any RFP bids were received. PacifiCorp adds that neither the company nor the Commission relied on the RFP bid information to set PacifiCorp’s avoided cost prices in the UM 1729(1) proceeding, and the company did not rely on RFP filings or the information disclosed at the UM 1729(1) public meeting in the preparation of its recently-filed direct testimony in this docket, either.

Resolution

Although the Commission has provided for a more thorough vetting of the company’s avoided costs via this proceeding, Staff did not support the use of an unacknowledged IRP Update as the source for avoided resource characteristics and costs and that “the use of a ‘preliminary review’ of bid responses to the Company’s RFP, which are not available for review, to support the avoided cost price update is unreasonable.” (Order No. 16-307, Appendix A at 6). Staff also proposed that the Commission motion include

“***cost and performance data from the acknowledged 2015 IRP***” (Order No. 16-307, Appendix A at 10). Thus, Order No. 16-307 removed the discussion of any bids submitted or reviewed by the company after the 2015 IRP from consideration in the next phase of the proceeding. Furthermore, any events that occurred in a special public meeting in a different docket are also beyond the scope of this proceeding and cannot act as a basis for discovery. The CREA data requests DR 1.1-1.8 therefore do not meet the ORCP standard for relevance. I deny the motion to compel with respect to DR 1.1-1.8.

A. Data Request Seeking information About the Wyoming Wind Farm Cost Characteristics (DR 1.9)

The Wyoming wind farm is the proxy resource in PacifiCorp’s currently effective avoided cost rates. CREA seeks studies and documents regarding the assumptions relied upon by the company to assert that it will be able to acquire wind energy from a new facility located in Wyoming without incurring any incremental transmission costs. Although PacifiCorp continues to object to the request it made no argument specifically in opposition to providing the data and did indeed provide some materials as part of its supplemental response to the CREA motion to compel.

Resolution

In Order 16-307, Appendix A at page 7, Staff notes that “PacifiCorp has not explained how a new proxy wind farm can have a capacity factor as high as 35 percent and not need transmission to wheel its output to a load center. And, PacifiCorp has not provided information to support the drop in costs of the proxy resource.” I find that the costs contained in PacifiCorp’s August 22, 2016 compliance filing in docket UM 1729 with respect to the Wyoming wind resource are relevant to this investigation updating avoided costs. The motion to compel with respect to the Wyoming Wind Farm Cost Characteristics, DR 1.9, is granted.

B. Data Request Seeking Information Underlying February 2, 2016 Testimony of Scott Bolton Before the Oregon House Energy and Environment Committee (DR 1.10)

CREA seeks an explanation from the company as to why, if Senate Bill 1547 enables near-term renewable procurement, the company has argued in docket UM 1729 that will not acquire renewable resources until 2028 or 2038 and whether Mr. Bolton agrees that he gave false testimony.

Resolution

Although the company objected to the request on grounds of relevancy, it provided a complete response. I find that the motion to compel with respect to DR 1.10 is therefore moot.

C. Data Request Seeking Copies of All Filings and Discovery Responses Made by PacifiCorp in Docket UM 1790, the 2017-2021 RPIP Docket (DR 1.11)

Data Request 1.11 and PacifiCorp's response appear in Attachment 1 to CREA's motion to compel. PacifiCorp objects to DR 1.11 as being outside the scope of the proceeding, overly broad, and not reasonably calculated to lead the discovery of admissible evidence. CREA states that DR 1.11 requested information and documents related to the company's need for renewable resources, including documents produced in the renewable implementation plan docket.

Resolution

The CREA request with respect to materials submitted in docket UM 1790, which is not a contested proceeding, is premature. Any request for data not publicly available which is provided by PacifiCorp in that docket but objected to in this proceeding, shall be addressed at the time a specific disagreement occurs.

Dated this 2nd day of November, 2016 at Salem, Oregon.



Allan J. Arlow
Administrative Law Judge