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February 28, 2018

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem, OR 97301

Re: In the Matter of PACIFICORP's Application for Approval of
2017R Request for Proposals
Docket No. UM 1845

Dear Filing Center:

Please find enclosed the Response of the Industrial Customers of Northwest Utilities in Reply to the Northwest and Intermountain Power Producers Coalition in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1845

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER,)	RESPONSE OF THE INDUSTRIAL
)	CUSTOMERS OF NORTHWEST
)	UTILITIES IN REPLY TO THE
PacifiCorp’s Application for Approval of)	NORTHWEST AND
2017R Request for Proposals.)	INTERMOUNTAIN POWER
_____)	PRODUCERS COALITION

I. INTRODUCTION

Pursuant to the Administrative Law Judge’s February 23, 2018 Ruling, the Industrial Customers of Northwest Utilities (“ICNU”) submits this response to the Northwest and Intermountain Power Producers Coalition’s (“NIPPC”) Response in Opposition to Motion for Modified Protective Order (“Response”). PacifiCorp has requested highly confidential treatment of information contained in its Independent Evaluator’s Final Report, a designation that ICNU does not oppose. However, ICNU joins NIPPC in objecting to PacifiCorp’s unnecessarily onerous conditions requiring parties other than Staff and the Citizens’ Utility Board of Oregon (“CUB”) to review information at PacifiCorp’s offices and preventing anyone who reasonably expects to be involved in the negotiation of power purchase agreements for the next two years from accessing highly confidential information. Such restrictions are unreasonable.

II. ARGUMENT

First, PacifiCorp’s request to limit access to highly confidential information to

inside its offices in Portland should be rejected. This request does not make logical sense and is inconsistent with prior Commission practice. PacifiCorp argues that limiting parties to on-site review “makes public disclosure, and the attendant harm, substantially less likely.”^{1/} It is nonsensical to mail CUB and Staff highly confidential information, while requiring all other parties to travel to PacifiCorp’s offices to review the same information. Either this information is so sensitive that it cannot leave PacifiCorp’s physical control, or it is not. ICNU recognizes that the Commission occasionally allows only Staff to access exceptionally sensitive proprietary information – but PacifiCorp has not made any showing that this is one of those situations.

Further, PacifiCorp’s motion does not describe why such restrictive and burdensome measures are necessary, or why other intermediate measures would not be appropriate.^{2/} Based on PacifiCorp’s motion, it does not appear that any alternative measures were considered. Had ICNU been contacted, it could have suggested alternatives to these onerous restrictions, including simply identifying certain information as highly confidential and requesting a modified protective order to cover this information, but still allowing PacifiCorp to provide it to signatories outside of its offices. This constitutes reasonable treatment of the subject information and the Commission should modify the highly confidential protective order in this case accordingly.

Second, the Modified Protective Order prohibits “persons that reasonably expect to be involved in ... negotiations of power purchase agreements within the next two years.”^{3/}

Read literally, this would extend to the negotiation of any PPA anywhere, regardless of whether

^{1/} PacifiCorp Motion for Modified Protective Order at 2.

^{2/} OAR 860-001-0080(3)(a)(E).

^{3/} Order No. 18-057, Appen. A ¶ 13(b).

it even indirectly involved PacifiCorp. Such a restriction makes no sense and is plainly overly restrictive. ICNU agrees with NIPPC that attorneys for parties should have access to highly confidential material. This has been standard practice for modified protective orders in Oregon and there is no indication that this case should be an exception. However, if the Commission is to place any requirements on attorneys for parties, those requirements should be limited to those who would reasonably expect to advise bidders in a PacifiCorp RFP or negotiate PPAs directly with PacifiCorp for one year. These restrictions are directly related to the highly confidential information at issue and last for a reasonable period of time. Again, however, ICNU's primary recommendation is that attorneys should have unrestricted access to highly confidential information (provided, of course, that they execute the modified protective order).

III. CONCLUSION

ICNU joins NIPPC in requesting that the Commission amend the modified protective order in this docket to eliminate the onerous requirement of on-site review of highly confidential information and allow attorneys for all parties to review this information.

Dated this 28th day of February, 2018

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Riley G. Peck

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