

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP	)	UE 307
	)	
PacifiCorp 2017 Transition Adjustment Mechanism	)	RESPONSE OF NOBLE AMERICAS ENERGY SOLUTIONS LLC TO PACIFICORP'S OBJECTION TO DESIGNATE KEVIN C. HIGGINS UNDER THE MODIFIED PROTECTIVE ORDER

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Noble Americas Energy Solutions LLC (“Noble Solutions”) hereby files with the Public Utility Commission of Oregon (“OPUC”) its response to PacifiCorp’s objection to the designation of Kevin C. Higgins as a qualified consultant under Modified Protective Order No. 16-231 (“Modified Protective Order”). As Noble Solutions previously explained, this request is limited to providing Mr. Higgins with information related to PacifiCorp’s current efforts to purchase renewable energy certificates (“RECs”). The question of whether RECs freed up by direct access customers have value is a central issue in Mr. Higgins’ testimony, and PacifiCorp’s recent effort to *acquire* RECs is a materially different factual circumstance from when the OPUC addressed this question in last year’s transition adjustment mechanism (“TAM”). The information that would be relevant, as requested in Noble Solutions’ data requests 5.2 and 5.3, includes the volume of RECs, vintage, and price,

As Noble Solutions’ sole witness and technical consultant to counsel, Mr. Higgins needs access to this information for the following legitimate purposes:

- To prepare for any cross examination by PacifiCorp of Mr. Higgins;

- To assist counsel in understanding the information and its potential probative value;
- To assist counsel in developing cross examination of PacifiCorp’s expert witness on this topic;
- To assist counsel in preparation of any additional exhibits to admit at the hearing on this topic; and
- To assist counsel in the determination of whether and how to use this information in Noble Solutions’ post-hearing legal brief.

The potential relevance of the information to Mr. Higgins’ testimony is obvious, and PacifiCorp has made no assertion to the contrary. To summarize, Mr. Higgins has argued that Oregon’s recently increased renewable portfolio standard (“RPS”) requirements in Senate Bill (“SB”) 1547 constitutes a material change of facts with respect to the REC credit proposal addressed in last year’s TAM (UE 296). Noble Solutions/100, Higgins/16-22; Noble Solutions/200, Higgins/3-11. Last year, the OPUC determined, in part, that a REC credit for freed-up RECs was unjustified because PacifiCorp had excess RECs which it was banking, and the present value of any future sale of RECs freed up by direct access would be *de minimis*. Order No. 15-394 at 12. The facts now appear to be materially different because PacifiCorp is actively *purchasing* RECs from third parties for compliance with SB 1547, raising the question of why the RECs freed up by a direct access election in the upcoming shopping window do not also have value to PacifiCorp at the present time.<sup>1</sup> Thus, Mr. Higgins has testified that if

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<sup>1</sup> It is currently undisputed that RECs are freed up for PacifiCorp’s use by a direct access election, and that the transition adjustment calculation provides no compensation to the direct access customer for those RECs.

PacifiCorp will be paying third parties for additional RECs necessary to meet the RPS standard, then there is no valid reason for failing to recognize the value of RECs freed up by (and paid for by) direct access customers at this time. Noble Solutions/300, Higgins/8. PacifiCorp argues, however, that SB 1547 is not a changed circumstance, and OPUC Staff apparently agrees. PAC/400, Dickman/90-91; Staff/500, Gibbens/2-3. Noble Solutions cannot adequately develop a response without complete discovery of PacifiCorp's ongoing purchase of RECs being made available to Mr. Higgins.<sup>2</sup>

PacifiCorp objects to Mr. Higgins' access to the REC purchase information on the ground that "[di]sclosure of the requested information to Mr. Higgins' clients would either allow competitor buyers to slightly outbid PacifiCorp or REC sellers to determine the floor price for bids in future RFPs." *PacifiCorp Objection* at 2. However, Noble Solutions has not made a request to designate "Mr. Higgins' clients" as qualified parties. Only Mr. Higgins would have access to the information. Under the terms of the Modified Protective Order, "[a] Qualified Person may discuss Highly Protected Information obtained under this order only with other Qualified Persons who have obtained the same information under this order." *Modified Protective Order* at P 17. Additionally, "[w]ithout the written permission of the designating party, any person given access to Highly Protected Information under this order may not disclose Highly Protected Information for any purpose other than participating in these proceedings." *Id.* at P 18. There is no basis to assume that Mr. Higgins would be unable to abide by these conditions.

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<sup>2</sup> PacifiCorp also has one more round of sur-rebuttal testimony due on the date of this response, which may further demonstrate Mr. Higgins' need for the information.

Furthermore, the entire premise of PacifiCorp's objection is undermined by two undisputed facts: (1) Mr. Higgins is not involved as a consultant assisting any party to PacifiCorp's ongoing REC RFP, and (2) PacifiCorp has already provided Mr. Higgins detailed information regarding PacifiCorp's recent REC *sales* to other third parties subject to the General Protective Order No. 16-128. Similar information regarding PacifiCorp's REC sales was also provided, and admitted into the record, in last year's TAM. *See* UE 296 Confidential Noble Solutions/100, Higgins/17; Confidential Noble Solutions/103, Higgins/1-5. Thus, PacifiCorp apparently agrees that detailed information regarding its recent REC transactions can be provided to Mr. Higgins. PacifiCorp provides no explanation for why details regarding its REC sales are any more commercially sensitive than the details regarding its REC purchases. Both occur in the same illiquid market. The only relevant distinction from PacifiCorp's other recent REC transactions is the *ongoing* nature of PacifiCorp's ongoing REC RFP. But Mr. Higgins is not bidding into the ongoing RFP or providing consulting services to anyone who is bidding into that RFP. Thus, the underlying data warrants no restrictions beyond those applied to Mr. Higgins' access than the details regarding recent REC sales made by PacifiCorp, which PacifiCorp already provided to Mr. Higgins.

PacifiCorp next incorrectly suggests that the only data requested is "pricing data," and that alleged fact somehow limits Mr. Higgins' need, apparently because PacifiCorp intends not to ask Mr. Higgins any cross-examination questions on the pricing data. *See PacifiCorp's Objection* at 4 ("the pricing data will not be an issue for cross-examination of Mr. Higgins"). This assertion only demonstrates the unfair advantage PacifiCorp is creating for itself. Even if

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PacifiCorp intends to limit its cross-examination questions to topics other than pricing data, Mr. Higgins might conclude the pricing data is relevant to his responses if he were aware of that data, or Noble Solutions' re-direct examination on the topic may incorporate the pricing data. Furthermore, aside from pricing data, several other withheld details regarding PacifiCorp's ongoing REC acquisitions are potentially relevant to this topic and Mr. Higgins' ability to prepare and contribute to Noble Solutions' efforts in this proceeding. For example, the year in which PacifiCorp will acquire the RECs and the quantity of the RECs are potentially relevant facts that Mr. Higgins will need to prepare for cross examination and assist counsel in developing Noble Solutions' case.

PacifiCorp also suggests that Mr. Higgins has already filed his last round of testimony and therefore has no need for the information. But this assertion overlooks that PacifiCorp may still cross examine Mr. Higgins. Further, as Noble Solutions' only technical expert, Mr. Higgins will be instrumental in determining what exhibits to prepare for admission at the hearing, what questions to ask of PacifiCorp's expert witness, and what argument to make in legal briefing.

In closing, the TAM calculation is one of the most technically complex regulatory matters the OPUC addresses. It is unreasonable to force counsel to attempt to apply technical data to the TAM calculation and attempt to engage in cross examination of PacifiCorp's expert witness on the topic without the assistance of Noble Solutions' own technical expert. It is doubly unreasonable to potentially subject Mr. Higgins to cross examination on this complex topic without access to the information available to PacifiCorp's attorneys and experts when they

develop their cross examination questions. The OPUC should therefore overrule PacifiCorp's objection to Mr. Higgins' qualification under the Modified Protective Order.

DATED this 22nd day of August, 2016.

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