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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 Request for ALJ Certification by the
Community Renewable Energy Association and Renewable Energy Coalition**

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket its Response to Request for ALJ Certification by the Community Renewable Energy Association and Renewable Energy Coalition.

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.

PACIFICORP'S
RESPONSE TO REQUEST FOR ALJ
CERTIFICATION

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) respectfully requests that the Administrative Law Judge (ALJ) deny the Community Renewable Energy Association's (CREA) and the Renewable Energy Coalition's (REC) (collectively, the Joint QFs) Motion for Certification of the ALJ's November 2, 2016 ruling (November 2 Ruling) denying CREA's request to compel PacifiCorp to disclose highly confidential, commercially sensitive information from the Company's 2016 renewable resource request for proposals (RFP), including all bids, supporting work papers, and documents from management's procurement decisions.

In the November 2 Ruling, the ALJ correctly reasoned that CREA's data requests seeking the RFP bid information do not meet the standard for relevance in this proceeding.¹ The Joint QFs are not prejudiced by the ALJ's ruling denying access to this highly confidential, commercially sensitive RFP bid information, which is outside the scope of this proceeding, and good cause does not exist to warrant certification.

The ALJ properly denied CREA's discovery requests for the following reasons:

- (1) Neither the Company nor the Commission relied on the RFP bid information to set the Company's avoided cost prices in UM 1729(1), and the Company did not rely on

¹ See *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, Ruling (Nov. 2, 2016).

- the RFP bid information in its October 14, 2016 opening testimony in this proceeding;
- (2) PacifiCorp would be prejudiced by disclosure of the highly confidential, commercially sensitive information from the Company's RFP, including all bids, supporting work papers, and documents from management's procurement decisions, which would turn this avoided cost proceeding into a forum for parties to attack the process and results of the RFP;
 - (3) Contrary to the Joint QFs' assertion, the November 2 Ruling does not prevent them from "suggest[ing] avoided cost inputs and assumptions based on events subsequent to PacifiCorp's IRP"² and the Joint QFs are free to submit testimony to support their own proposal;
 - (4) The ALJ had the opportunity to thoroughly and carefully review and consider these issues based on the five pleadings already filed or submitted relating to this single discovery dispute;³
 - (5) The ALJ correctly ruled that CREA's blanket request for all documents from the Company's Renewable Portfolio Implementation Plan (RPIP) proceeding did not warrant a ruling compelling disclosure.

² *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 (Nov. 17, 2016).

³ These five documents include: (1) CREA's Request for Informal Resolution of Discovery Dispute submitted on October 4, 2016; (2) PacifiCorp's Motion for Clarification, or Alternatively, Certification; (3) CREA's Response to PacifiCorp's Request for ALJ Certification; (4) CREA's Motion to Compel Discovery; and (5) PacifiCorp's Response to CREA's Motion to Compel.

I. STATEMENT OF FACTS

A. The Discovery Dispute and November 2 Ruling

The Joint QFs' Motion for Certification, filed on November 17, 2016, is the sixth pleading or submittal in this proceeding on this single discovery dispute regarding access the Company's highly confidential, commercially sensitive bids and management decision-making documents from its 2016 resource RFP. These issues have been thoroughly presented by parties, and the ALJ has had ample opportunity and information to conclude that the information requested is outside the scope of this proceeding.

On October 4, 2016, CREA contacted the ALJ to request an informal resolution of this discovery dispute and simultaneously submitted a lengthy legal argument in pleading form (characterized by CREA as a Request for Informal Resolution of Discovery Dispute). PacifiCorp was unable to adequately respond to CREA's lengthy request before the October 6, 2016 informal discovery conference. As a result, the ALJ's statements at the October 6, 2016 informal discovery conference were based on CREA's one-sided presentation of the dispute.

To quickly resolve this discovery dispute, PacifiCorp filed a Motion for Clarification or Certification on October 12, 2016, just six days after the informal discovery conference. On October, 19, 2016, CREA filed its response to PacifiCorp's Motion for Clarification or Certification and simultaneously filed a competing Motion to Compel. In its Motion to Compel, CREA asked for expedited consideration and again sought to completely deny PacifiCorp the right to respond, or alternatively, shorten PacifiCorp's response time from fifteen days to two

days.⁴ The ALJ denied CREA's request for such expedited consideration.⁵ PacifiCorp filed its response to CREA's Motion to Compel on October 26, 2016.

On November 2, 2016, the ALJ issued its Ruling Partially Granting and Partially Denying CREA's Motion to Compel. In that ruling, the ALJ held that CREA's Data Requests 1.1-1.8 seeking highly confidential, commercially sensitive information from the Company's RFP bids are not relevant to this proceeding.⁶

On November 17, 2016, REC and CREA filed a joint motion to modify the procedural schedule citing this attempt to certify the November 2 Ruling as a primary reason to delay filing response testimony by three weeks in this expedited proceeding.⁷ REC and CREA also asked to reserve the right to file supplemental testimony depending on the outcome of their certification request.⁸

B. The Scope of UM 1794

This expedited contested case proceeding was opened to allow a possible revision to the Company's avoided cost prices and allow parties to vet the issues raised in UM 1729(1) in light of the Company's proposal.⁹

Neither the Company nor the Commission relied on the RFP bid information to set PacifiCorp's avoided cost prices in UM 1729(1), nor did PacifiCorp rely on the highly

⁴ *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, Motion to Compel Discovery by the Community Renewable Energy Association at 3 (Nov. 19, 2016).

⁵ *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, Ruling at 2 (Oct. 20, 2016).

⁶ November 2 Ruling at 3.

⁷ *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, Renewable Energy Coalition and Community Renewable Energy Association Motion for Extension of Time Expedited Consideration Requested at 1 (Nov. 17, 2016).

⁸ *Id* at 2.

⁹ *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, Order No. 16-307 App. A. at 3-4 (Aug. 18, 2016).

confidential, commercially sensitive RFP bid information in its October 14, 2016 opening testimony in this proceeding. Contrary to the Joint QFs' assertions in their Motion for Certification,¹⁰ the Company did not present or otherwise rely on the detailed RFP bid information that the Joint QFs now seek.

The facts leading up to this discovery dispute have been explained by PacifiCorp in both its Motion for Clarification or Certification and its Response to CREA's Motion to Compel. PacifiCorp incorporates by reference its statement of facts from those filings and will not restate all relevant facts here.

II. LEGAL STANDARD

The standard for certification of an ALJ ruling is set forth in OAR 860-001-0110(2), which provides that an ALJ must certify a ruling if: "(a) the ruling may result in substantial detriment to the public interest or undue prejudice to a party; (b) the ruling denies or terminates a person's participation; or (c) good cause exists for certification." Here, the Joint QFs have not made a proper showing that certification is appropriate.

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."¹¹ 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.¹² The Oregon courts and the Commission have affirmed that

¹⁰ See Request for ALJ Certification by the Community Renewable Energy Association and Renewable Energy Coalition at 3.

¹¹ 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).

¹² OAR 860-001-0450.

the information sought in discovery must be reasonably calculated to lead to the discovery of admissible evidence.¹³

III. ARGUMENT

The Joint QFs were not prejudiced by the November 2 Ruling denying disclosure of highly confidential, commercially sensitive information from the Company's 2016 resource RFP, including all bids, supporting work papers, and documents from management's procurement decisions, which are outside the scope of this avoided cost proceeding. After consideration of these issues that were thoroughly briefed by parties, the ALJ correctly concluded that the RFP bid information is outside the scope of this proceeding.¹⁴ Therefore, good cause does not exist to certify the November 2 Ruling.

The Company addressed many of these arguments in its Motion for Clarification or Certification and its Response to CREA's Motion to Compel and incorporates those documents by reference without restating all of its arguments here.

A. The Highly Confidential, Commercially Sensitive RFP Bids Have Not Been Used as Evidence to Support Cost and Performance and Are Not Relevant to the Renewable Resource Deficiency Date.

As the Company stated in its Motion for Clarification or Certification and its Response to CREA's Motion to Compel, the Joint QFs inappropriately attempted to expand the scope of this expedited contested case proceeding into an investigation of the process and results of the Company's RFP. The Joint QFs state that "PacifiCorp justified its proposed avoided cost rates in UM 1729 based on the results of its 2016 Renewable RFP."¹⁵ In fact, as the Company has

¹³ 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).

¹⁴ November 2 Ruling at 3.

¹⁵ Request for ALJ Certification by the Community Renewable Energy Association and Renewable Energy Coalition at 6.

repeatedly stated, neither the Company nor the Commission relied on the confidential RFP bid information as evidence to support cost and performance inputs or the resource deficiency date in UM 1729(1) or in this proceeding.¹⁶ The currently-effective avoided cost rates are primarily based upon inputs from the 2015 IRP, not the Company's RFP bids—a fact that CREA has acknowledged.¹⁷ Additionally, the Company did not rely on the RFP bid information in its opening testimony in this proceeding. The RFP bids simply were not and are not used to set the Company's avoided cost prices.

The November 2 Ruling notes that “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.”¹⁸ CREA's attempts to connect the July 26, 2016 special public meeting regarding the Company's RFP information, which was not part of UM 1729(1), does not support the relevance of those materials in this new proceeding.¹⁹ As the Company noted in its response to CREA's motion to compel, any attempt to link UM 1794 with that July 26 special public meeting is far-reaching at best.²⁰ The materials presented at the July 26, 2016 special public meeting were not presented in UM 1729(1), nor were they relied upon by the Company or the Commission in that proceeding. The Joint QFs now claim they were prejudiced by the ALJ's ruling declining to compel the disclosure of this information. Simply put, information from a completely separate special public meeting that was not presented or relied upon in UM 1729(1) or in UM 1794 is outside the scope of this avoided cost proceeding.

¹⁶ See e.g., *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, PacifiCorp's Response to CREA's Motion to Compel at 5 (Oct. 26, 2016); *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, PacifiCorp's Motion for Clarification, or Alternatively, Certification at 3 (Oct. 12, 2016).

¹⁷ Motion to Compel Discovery by the Community Renewable Energy Association at 7.

¹⁸ *Id.*

¹⁹ See *id.*

²⁰ PacifiCorp's Response to CREA's Motion to Compel at 6.

The Joint QFs attempt to confuse and conflate the 2028 renewable resource deficiency date with the highly confidential, commercially sensitive RFP *bid* information. The Joint QFs assert that “one major issue addressed in UM 1729 was how PacifiCorp’s Renewable RFPs should affect its renewable sufficiency/deficiency demarcation date.”²¹ The Commission discussed and considered potential impacts of Senate Bill (SB) 1547 on the Company’s avoided cost prices and the renewable resource deficiency date, *not the RFP bids and decision-making process*. The Joint QFs attempted to expand the scope of this proceeding to attack the Company’s RFP process and the ALJ did not agree with the Joint QFs’ reasoning.²²

The Joint QFs reference statements made by Mr. Link and Ms. Kamman at the August 16, 2016 public meeting to support their position that the RFP *decision-making process* and *bids* are relevant in UM 1794.²³ At that meeting, the Company pointed out that the 2018 resource deficiency date was not supported by a renewable resource acquisition.²⁴ Those comments did not somehow open the door to the disclosure of the highly confidential, commercially sensitive RFP *bid* information, supporting workpapers, and management decision-making documents as requested by CREA.

B. Requiring Disclosure of the RFP Bid Information Would Improperly Turn This Expedited Proceeding into a Forum to Attack the Company’s RFP Process.

As the Company noted in its Motion for Clarification or Certification, the Company would be prejudiced by the disclosure of the confidential RFP bid information because the Joint QFs would turn this expedited contested case proceeding into a forum to attack the Company’s

²¹ Request for ALJ Certification by the Community Renewable Energy Association and Renewable Energy Coalition at 5.

²² November 2 Ruling at 2-3

²³ See Request for ALJ Certification by the Community Renewable Energy Association and Renewable Energy Coalition at 8.

²⁴ August 16, 2016 Public Meeting at 42:55.

RFP process.²⁵ CREA sought all documents from management's procurement decisions related to the 2016 resource RFP, which is a blatant attempt to expand this forum into a process to vet the Company's RFP process.

The ALJ properly prevented unnecessary disclosure of highly confidential, commercially sensitive RFP bid information to CREA and REC, which represent entities that could be competitors in future RFPs. Such disclosure would have a chilling effect on future RFPs as bidders would not be assured that the confidential bids would remain protected from discovery by potential competitors. Disclosing this information to such entities, particularly to expert consultants or other individuals that would be involved in future RFP processes, would undermine the competitive nature of future RFPs.

Transforming this expedited avoided cost proceeding into a forum to attack the RFP process would significantly compromise the expedited nature of this proceeding, causing further uncertainty regarding the Company's avoided cost prices. The Joint QFs already sought and received a three-week extension of time to file response testimony, which has significantly compressed the procedural schedule in this *expedited* contested case proceeding.²⁶

C. The Joint QFs Incorrectly Claim They Are Prevented from Presenting Avoided Cost Inputs and Assumptions on Events After the Company's 2015 IRP.

The Joint QFs are free to submit testimony that supports their own recommendation or criticizes the Company's proposal. The November 2 Ruling did not somehow deny the Joint QFs this opportunity. This ruling merely prevents the Joint QFs from inappropriately expanding the scope of this proceeding to attack the Company's decision-making associated with the 2016 renewable resource RFP and prevents unnecessary disclosure of the highly confidential,

²⁵ See PacifiCorp's Motion for Clarification or Certification at 9.

²⁶ See November 18 Ruling at 1.

commercially sensitive RFP bid information to entities that represent potential bidders in any future RFP by any utility.

The Joint QFs incorrectly state that all parties (Commission, Staff, and PacifiCorp) can suggest updated post-2015 IRP information but that the Joint QFs cannot.²⁷ In the Company's opening testimony, filed on October 14, 2016, Mr. Dickman cites two publicly available studies to support its position to update stale cost and performance data.²⁸ The Joint QFs have the option to use publicly available reports to support their position in this proceeding as PacifiCorp has done or to vet and question these studies. The Joint QFs may present their own findings to refute PacifiCorp's position in its opening testimony. Instead, the Joint QFs have chosen to spend substantial resources on this single discovery dispute.

D. Certification of the November 2 Ruling is Not Warranted When the ALJ Had the Opportunity to Thoroughly Review and Consider These Arguments When Reviewing the Five Filings or Submittals on this Single Discovery Dispute.

This discovery dispute, which the Joint QFs cited to amend the procedural schedule and request a three-week extension to file testimony, began in early October, and parties had sufficient opportunity to present arguments in the five filings or submittals on this single discovery dispute. The November 2 Ruling was based on thorough review of the arguments, and therefore, good cause does not exist to warrant certification.

IV. CONCLUSION

Consistent with the narrow scope of this expedited proceeding to vet the Company's avoided cost updated, the ALJ correctly ruled that the Company's RFP bid information and decision-making process are not directly relevant to this proceeding. The Joint QFs are not

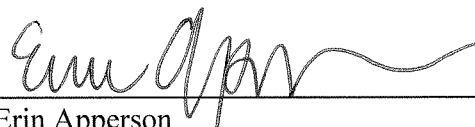
²⁷ See Request for ALJ Certification by the Community Renewable Energy Association and Renewable Energy Coalition at 3.

²⁸ PAC/100, Dickman/12-13.

prejudiced by the ALJ's ruling denying access to this highly confidential, commercially sensitive RFP bid information that was not relied upon in either UM 1729(1) or the Company's opening testimony in this proceeding. Therefore, good cause does not exist to warrant certification.

For the foregoing reasons, PacifiCorp respectfully requests that the ALJ deny the Joint QFs' request for certification of the November 2 Ruling.

Respectfully submitted this 1st day of December, 2016.

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