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October 26, 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 Community Renewable Energy Association'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

Enclosures

**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 Administrative Law Judge (ALJ) Arlow deny the Community Renewable Energy Association’s (CREA) Motion to Compel. As detailed in PacifiCorp’s Motion for Clarification or, Alternatively, Certification, filed October 12, 2016, CREA seeks highly confidential, commercially sensitive information from the Company’s requests for proposals (RFPs), which are unrelated to setting the Company’s avoided cost prices. Requiring disclosure of this information would shift the focus away from setting the Company’s avoided cost prices; instead, parties would improperly use this investigation to challenge the process and results of the RFPs, which is outside the scope of this proceeding.

I. STATEMENT OF FACTS

In Order No. 16-307, the Public Utility Commission of Oregon (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). In UM 1729(1), PacifiCorp filed several proposed updates to its standard avoided cost pricing; *none* of these filings used the RFP bids as inputs or relied on the RFP bids as evidence or necessary support for the Company’s proposals. PacifiCorp’s Motion for

Clarification or Certification includes a summary of its statement of facts and is incorporated by reference.

PacifiCorp filed its Motion for Clarification or Certification on October 12, 2016, requesting clarification that the October 6, 2016 informal discovery conference did not result in a ruling compelling PacifiCorp to produce highly confidential, commercially sensitive bid information from the Company's RFPs. Alternatively, if the ALJ's statements at the October 6, 2016 discovery conference constituted a ruling, PacifiCorp sought certification because the ruling would prejudice PacifiCorp by requiring it to disclose highly confidential, commercially sensitive RFP bids, which are unrelated to setting the Company's avoided cost prices.

On October 14, 2016, PacifiCorp filed its Opening Testimony in this proceeding, which proposes updates to its standard avoided cost prices using cost and performance inputs from the Company's 2015 Integrated Resource Plan (IRP) Update and maintains 2028 as the renewable and non-renewable resource deficiency date. As Mr. Dickman explains in his testimony, if the Company's avoided cost prices assume a renewable resource is acquired in 2028, which is a departure from the acknowledged IRP, the avoided cost prices "should also reflect the most current estimates of the costs to acquire such a resource if retail customers are to remain indifferent to purchasing the output of a renewable qualifying facility."¹ Reliance on the 2015 IRP Update is necessary due to significant reductions in the cost of renewable resources since the 2015 IRP was prepared, and the Company referenced two studies to support those inputs.²

On October 18, 2016, PacifiCorp supplemented its responses to CREA Data Requests 1.9 and 1.10. In its Motion to Compel, CREA asserts that by responding to these requests,

¹ PAC/100, Dickman 6.

² See Exhibit PAC/101 and Exhibit PAC/102, which include the DNV GL Study of Renewable Supply Options for PGE and the Black & Veatch Wind Generation Study.

PacifiCorp conceded that these topics are relevant, and therefore, complete responses are necessary to CREA Data Requests 1.8 and 1.11.³ However, in PacifiCorp's supplemental responses, included as Attachment A, PacifiCorp maintained its objections and provided responses without waiving those objections. Furthermore, CREA Data Request 1.8 relates to the Company's resource decisions in its RFP, which PacifiCorp has consistently stated are outside the scope of this proceeding.

Before the ALJ or Commission had an opportunity to rule on PacifiCorp's Motion for Clarification or Certification, CREA further complicated this discovery dispute by filing a Motion to Compel as a competing alternative motion. In addition to filing its Motion to Compel prematurely, CREA asked for expedited consideration and sought to completely deny PacifiCorp the right to respond or, alternatively, shorten the timeframe for PacifiCorp's response from fifteen days as permitted by OAR 860-001-0420(4) to two days.⁴ Also, on October 19, 2016, CREA filed its response to PacifiCorp's Motion for Certification asking ALJ Arlow to deny PacifiCorp's request for certification or, alternatively, grant CREA's Motion to Compel. After inappropriately conflating the discovery dispute rules under OAR 860-001-0500(6) and OAR 860-001-0500(7), CREA now attempts to moot the problems it caused by its misuse of the discovery rules and avoid a ruling on PacifiCorp's Motion for Clarification or Certification.

³ Motion to Compel at 6.

⁴ On October 18, 2016, CREA contacted parties and stated it intended to file a motion to compel and request expedited consideration with a two day response time for PacifiCorp. Parties' communications are attached as Attachment B. In its Motion to Compel, CREA took this request a step further and stated that PacifiCorp should be flatly denied its right to respond, or, alternatively, the response time should be limited to two days. In support of its attempt to deny PacifiCorp its right to respond, CREA reasoned that PacifiCorp "already had the opportunity to present its objections to the underlying data requests prior to and during the discovery conference and in its request for clarification or certification . . ." ⁴ Once again, CREA confused and conflated the discovery rules. By objecting to the data requests and discussing these issues during the discovery conference, PacifiCorp did not waive its right to respond to CREA's Motion to Compel. Nor did PacifiCorp waive its right to respond by filing a Motion for Clarification or Certification.

On October 20, 2016, ALJ Arlow denied CREA’s request for expedited consideration and stated that the request was unreasonable in light of PacifiCorp’s pending Motion for Clarification or Certification.⁵ ALJ Arlow directed PacifiCorp to file its response on or before October 26, 2016.⁶ The October 20, 2016 ruling also stated that the October 6, 2016 discovery conference “focused on the relevancy of the RFP bid information.”⁷ CREA characterized the October 6 discovery conference differently, asserting that ALJ Arlow determined CREA’s entire first set of discovery requests were “narrowly tailored to obtain information that is likely to lead to relevant evidence regarding PacifiCorp’s avoided costs.”⁸

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.”⁹ 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.¹⁰ 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.¹¹

⁵ ALJ Arlow’s Ruling at 2 (Oct. 20, 2016).

⁶ *Id.*

⁷ *Id.* at 1.

⁸ Motion to Compel at 2.

⁹ 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).

¹⁰ OAR 860-001-0450.

¹¹ 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).

III. ARGUMENT

CREA, an organization that represents potential bidders in future RFPs, unreasonably seeks to compel PacifiCorp to produce highly confidential, commercially sensitive information from the Company's RFPs. The RFP bid information is outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. PacifiCorp incorporates by reference its arguments in its Motion for Clarification or Certification regarding the relevance of the RFP bid information. Additionally, CREA's attempts to place the RFP bids at issue in this new proceeding are unpersuasive because: (1) use of the 2015 IRP Update does not somehow make the RFP bids relevant; (2) the July 26, 2016 special public meeting was not part of UM 1729(1); and (3) CREA does not need RFP bid information to create its own proposal in UM 1794.

PacifiCorp does not rely on the highly confidential, commercially sensitive bids in its Opening Testimony; therefore, CREA now attempts to create an "inextricable" link between the 2015 IRP Update and the RFP bids to place this information at issue in this proceeding. CREA states: "Despite arguing that it would not present evidence in docket UM 1794 that placed the RFP results in issue, PacifiCorp in fact relies again on its *unacknowledged* 2015 IRP Update."¹² CREA mischaracterizes the relationship between the 2015 IRP Update and the RFP bid information. The Company's IRP Update was filed on March 31, 2016, several months *before* PacifiCorp received any results from the RFPs. The Company proposed to use the 2015 IRP Update in UM 1729(1), and neither the Company nor the Commission relied on the RFP bid information to set PacifiCorp's avoided cost prices in that proceeding. CREA has acknowledged that the Company has not used the RFP bids to support its proposal in UM 1794.¹³

¹² Motion to Compel at 7.

¹³ *See id.*

CREA's attempts to link the July 26, 2016 special public meeting to UM 1794 are far-reaching. The July 26, 2016 special public meeting was not part of UM 1729(1), and the information presented at that meeting was not used to set the Company's avoided cost prices. Nor did the Company rely on information from that special public meeting in its testimony in this new proceeding. The link CREA attempts to make between UM 1794 and the July 26 special public meeting simply does not exist.

In its attempts to tie the RFP bids to the 2015 IRP Update, CREA ignores the Company's reason for using updated inputs and the publicly available studies supporting these inputs. In its Opening Testimony, PacifiCorp does not oppose using 2028 for renewable resource deficiency even though the acknowledged 2015 IRP did not identify such a need. In addition to maintaining a deficiency date outside of the 2015 IRP, PacifiCorp also proposes to update cost and performance "to capture noteworthy changes since the 2015 IRP was prepared in 2014."¹⁴ The Company cites multiple studies supporting its reliance on inputs from the 2015 IRP Update.¹⁵ There is no need to disclose the highly confidential, commercially sensitive RFP bids in this proceeding to support the use of inputs from the 2015 IRP Update.

CREA's arguments regarding its proposed use of certain information from the Company's RFPs are unavailing. CREA claims it needs the cost assumptions for Bonneville Power Administration (BPA) transmission that PacifiCorp used to evaluate RFP bids to enable CREA to develop its own proposal in this proceeding (CREA Data Request 1.7). BPA's transmission rates should be available for CREA's review; CREA does not need information from the RFPs to develop its own proposal. Additionally, CREA asserts that it needs the Company's internal documents that could provide insights into the Company's "actual" resource

¹⁴ PAC/100, Dickman 7.

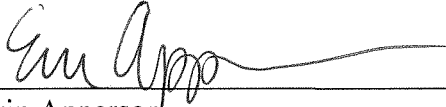
¹⁵ See Exhibit PAC/101; Exhibit PAC/102.

sufficiency position and to test the truth of allegations made by PacifiCorp “earlier in this proceeding.”¹⁶ These statements underscore PacifiCorp’s concerns that disclosure of the RFP bid information would improperly shift the focus of this investigation, and parties would use this expedited proceeding to challenge the process and results of the RFPs.

IV. CONCLUSION

For the foregoing reasons, PacifiCorp respectfully requests that the Commission deny CREA’s Motion to Compel.

Respectfully submitted this 26th day of October, 2016.

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

¹⁶ Motion to Compel at 8. It is unclear whether “this proceeding” is a reference to statements made in UM 1794 or UM 1729(1). These are two different proceedings.

ATTACHMENT A

PacifiCorp's 1st Supplemental Responses to
CREA Data Requests 1.9 and 1.10

CREA Data Request 1.9

Reference PacifiCorp's UM 1729 compliance filing made on August 22, 2016, containing a Wyoming wind farm with a 43% capacity factor and no incremental transmission costs as the next avoidable renewable resource. Please provide all studies and documents in PacifiCorp's possession that PacifiCorp relies upon for the assumption that it will be able to acquire wind energy from a new facility located in Wyoming without incurring any incremental transmission costs.

1st Supplemental Response to CREA Data Request 1.9

The Company continues to object to this request as seeking information outside the scope of this proceeding, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, the Company responds as follows:

In its 2015 Integrated Resource Plan (IRP), upon the assumed retirement of the 762 megawatt (MW) Dave Johnston generating plant at the end of 2027, PacifiCorp assumed existing transmission assets will remain in-service and can be used to deliver a proxy Wyoming wind resource to load without incremental transmission integration costs. Please refer to Confidential Attachment CREA 1.9 1st Supplemental, which provides a copy of a Microsoft Excel spreadsheet entitled "SSR EPM Inputs v20141021- Received 9-25-2014" which was included on the confidential data disks filed with the Public Utility Commission of Oregon (OPUC) concurrent with the Company's 2015 IRP.

Confidential Attachment CREA 1.9 1st Supplemental contains supply side resource cost inputs used in PacifiCorp's 2015 IRP modeling. Transmission integration cost assumptions entered into the model for all proxy resources are identified in the worksheet labeled "FOM." The model name for proxy wind resources available after the assumed retirement date is "I_DJ_WD_40" (see row 112 in the "FOM" worksheet).

The confidential attachment is designated as Protected Information under Order No. 16-354 and may only be disclosed to qualified persons as defined in that order.

CREA Data Request 1.10

Reference Testimony of Scott Bolton to the House Energy and Environment Committee, 78th Oregon Legislative Assembly 2016 Regular Session, Scott Bolton presentation at 2 (Feb. 2, 2016) (SB 1547 was originally HB 4036), stating the Oregon renewable portfolio standard revisions “incentivizes early action through its REC banking provision, which allows utilities and customers to benefit from recently extended federal tax credits. HB 4036 enables at least 225 MW of additional low-cost renewable procurement over the near-term”.

- (a) If SB 1547 enables near-term renewable procurement, why has PacifiCorp subsequently argued in UM 1729 that it will not acquire renewable resources until 2028 (or even 2038)?
- (b) Does Mr. Bolton agree that his statement to the legislature was false? If not, please explain how his statement is consistent with PacifiCorp’s subsequent position taking before the OPUC that SB 1547 does not require acquisition of renewable resources in the near term.

1st Supplemental Response to CREA Data Request 1.10

The Company continues to object to this request as seeking information outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, the Company responds as follows:

- (a) Senate Bill (SB) 1547 *incentivizes* near-term renewable procurement but does not *enable* or require near-term renewable procurement. PacifiCorp procurement of resources, including renewable resources, is guided by least-cost, least-risk analysis consistent with PacifiCorp’s integrated resource planning process.
- (b) No, Mr. Bolton does not agree that his statement to the legislature was false.

ATTACHMENT B
Parties' Communications

Apperson, Erin

From: Greg Adams <Greg@richardsonadams.com>
Sent: Wednesday, October 19, 2016 4:21 PM
To: Apperson, Erin
Subject: [INTERNET] RE: UM 1794 CREA's Upcoming Motions and Request for Expedited treatment

This message originated outside of Berkshire Hathaway Energy's email system. Use caution if this message contains attachments, links or requests for information. Verify the sender before opening attachments, clicking links or providing information.

Thanks Erin. We will state that PacifiCorp opposes expedited treatment on the motion to compel.

Greg Adams
Richardson Adams, PLLC
515 N. 27th Street, 83702
P.O. Box 7218, 83707
Boise, Idaho
Voice: 208.938.2236
Facsimile: 208.938.7904

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From: Apperson, Erin [mailto:Erin.Apperson@pacificorp.com]
Sent: Wednesday, October 19, 2016 5:11 PM
To: Irion Sanger; Greg Adams; Oregon Dockets; dockets@renewablenw.org; brittany.andrus@state.or.us; stephanie.andrus@state.or.us; jeff@oseia.org; Dalley, Bryce; dina@renewablenw.org; jravenesanmarcos@yahoo.com; erica@oseia.org; brian.skeahan@yahoo.com; silvia@renewablenw.org; sidney@sanger-law.com
Subject: RE: UM 1794 CREA's Upcoming Motions and Request for Expedited treatment

It is premature for CREA to file a motion to compel before receiving a ruling on PacifiCorp's motion for clarification/certification. It is unclear whether a motion to compel is necessary until a ruling is made on PacifiCorp's motion for clarification/certification. Therefore, PacifiCorp cannot agree to an expedited timeframe for CREA's motion when it is filed prematurely.

In addition to the fact that CREA's motion to compel is premature, requesting a two day response time is unreasonable. This would not provide PacifiCorp adequate opportunity to respond. This is the second time in this discovery dispute that that CREA seeks to give PacifiCorp only two days to respond to its written arguments.

After receiving a ruling on PacifiCorp's motion for clarification/certification, if a motion to compel is necessary, PacifiCorp would be willing to discuss deviating from the 15 days permitted for a response.

Erin Apperson
Attorney, Pacific Power
PacifiCorp

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Attachment B
Page 2 of 3

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From: Irion Sanger [<mailto:irion@sanger-law.com>]
Sent: Tuesday, October 18, 2016 4:59 PM
To: Greg Adams; Oregon Dockets; dockets@renewablenw.org; brittany.andrus@state.or.us; stephanie.andrus@state.or.us; Apperson, Erin; jeff@oseia.org; Dalley, Bryce; dina@renewablenw.org; jravenesanmarcos@yahoo.com; erica@oseia.org; brian.skeahan@yahoo.com; silvia@renewablenw.org; sidney@sanger-law.com
Subject: [INTERNET] Re: UM 1794 CREA's Upcoming Motions and Request for Expedited treatment

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Renewable Energy Coalition supports expedited consideration.

Irion Sanger

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From: Greg Adams <Greg@richardsonadams.com>
Date: Tuesday, October 18, 2016 at 4:57 PM
To: "oregondockets@pacificorp.com" <oregondockets@pacificorp.com>, "dockets@renewablenw.org" <dockets@renewablenw.org>, Greg Adams <Greg@richardsonadams.com>, "brittany.andrus@state.or.us"

<brittany.andrus@state.or.us>, "stephanie.andrus@state.or.us" <stephanie.andrus@state.or.us>, Page 3 of 3
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<silvia@renewablenw.org>, Sidney Villanueva <sidney@sanger-law.com>

Subject: UM 1794 CREA's Upcoming Motions and Request for Expedited treatment

UM 1794 Parties,

CREA intends to file a response to PacifiCorp's motion for ALJ Clarification/Certification tomorrow, and concurrently also file, in the alternative, an expedited motion to compel discovery of the first set of data requests, which ALJ Arlow had directed PacifiCorp to respond to at the discovery conference on October 6.

I am contacting you for your parties' position on an expedited response time for the motion to compel. Given that PacifiCorp has already set forth its position in its motion for ALJ clarification/certification, CREA intends to ask for a two-day response time for responses to the motion to compel.

Without such expedited treatment, it appears likely we will need to request to modify the procedural schedule.

I intend to file the response and motion tomorrow, so please indicate your position by COB tomorrow.

Greg Adams
Richardson Adams, PLLC
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P.O. Box 7218, 83707
Boise, Idaho
Voice: 208.938.2236
Facsimile: 208.938.7904

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