

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1794**

In the Matter of	)	
	)	
PACIFICORP, dba PACIFIC POWER,	)	RENEWABLE ENERGY
	)	COALITION’S MOTION TO
Investigation Into Schedule 37 – Avoided	)	COMPEL DISCOVERY
Cost Purchases from Qualifying Facilities	)	
of 10,000 kw or Less	)	EXPEDITED CONSIDERATION
_____	)	REQUESTED
	)	

**I. INTRODUCTION**

The Renewable Energy Coalition (the “Coalition”) files this motion to compel discovery, respectfully requesting that the Oregon Public Utility Commission (the “Commission” or “OPUC”) Administrative Law Judge (“ALJ”) Allan Arlow require PacifiCorp to either provide the Coalition a copy of the integrated resource plan (“IRP”) models or to perform the specific IRP model runs the Coalition requested in Data Requests (“DRs”) 1.2, 1.3, and 1.4. If ALJ Arlow grants this motion, then the Coalition remains willing to work with PacifiCorp to reduce any burdens associated with performing any specific model runs.

The Coalition requests expedited consideration of this motion and has conferred with PacifiCorp accordingly. In recognition that the deadline to file testimony (November 18) is rapidly approaching, the Coalition and PacifiCorp have agreed to shorten the response period to seven days (due November 7) and the reply period to three (due November 10) for this motion. Given this and other discovery disputes, the Coalition is likely to request that the current scheduled be extended, but would like to ensure that any delays are as limited as possible.

Pursuant to OAR 860-001-0420 and 860-001-0500, the Coalition has made a good faith effort to confer and resolve this discovery dispute related to this first set of DRs (due on October 17, 2016). On October 17, 2016 PacifiCorp sent incomplete responses and objections to the Coalition's first set of DRs. Over the next two weeks and prior to October 26, 2016, the Coalition's counsel and PacifiCorp's counsel had discussed the Coalition's first set of DRs and were unable to resolve their differences. After unsuccessfully exchanging phone messages, on October 26, 2016, the Coalition's counsel notified PacifiCorp via email that the Coalition intended to file a motion to compel. After several subsequent emails back and forth, PacifiCorp's counsel confirmed that PacifiCorp was unwilling to provide the information requested in DRs 1.2., 1.3., and 1.4. Attachment A includes copies of electronic communications between counsel attempting to resolve this dispute.

The Coalition's position in both UM 1729 and this proceeding is that PacifiCorp's avoided cost rates and the IRP assumptions were inaccurate when they were filed and believes they are wildly inaccurate given the subsequent passage of SB 1547 and PacifiCorp's announcements that it would be retiring two coal plants early. PacifiCorp chose not to seek acknowledgment of its 2015 IRP Update and instead asked the Commission to look back to its original 2015 IRP filing to set the demarcation of the sufficiency/deficiency periods. That filing was acknowledged by the Commission, but neither it nor the 2015 IRP Update have ever been vetted and reflect nothing more than PacifiCorp's estimates. Should ALJ Arlow permit PacifiCorp to avoid providing complete responses to the Coalition's data requests, then PacifiCorp's data inputs and assumptions in its 2015 IRP and IRP Update may never be vetted.

## II. BACKGROUND

In Order No. 16-307, the Commission ordered PacifiCorp to file new avoided cost prices based on renewable and non-renewable deficiency periods beginning in 2028, and the cost and performance data from its (acknowledged) 2015 IRP rather than its (unacknowledged) 2015 IRP Update. Among other things, the Coalition and other parties challenged whether PacifiCorp's proposed renewable and non-renewable dates of deficiency were correct based on allegations that both PacifiCorp's 2015 IRP's and IRP Update's inputs and assumptions were inaccurate or unreasonable.<sup>1</sup> In addressing due process concerns raised by the parties, the Commission acknowledged that parties had not had an opportunity to vet the data relied upon in either the 2015 IRP or the 2015 IRP Update filed by PacifiCorp.<sup>2</sup> Order No. 16-307 also directed an expedited contested case proceeding be opened to "allow a more thorough vetting of the issues raised in this proceeding and possible revision to Schedule 37 avoided cost prices on a prospective basis."<sup>3</sup> Thus, one of the key issues that should be vetted is the Coalition's claim that the dates of renewable and non-renewable deficiency should be changed based on more reasonable and accurate inputs and assumptions.

The DRs at issue in this motion are part of the expedited contested case proceeding ordered by the Commission. The Coalition seeks additional computer model

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<sup>1</sup> Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Joint QF Parties' Comments at 5, 11 (July 1, 2016).

<sup>2</sup> Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Public Meeting at 1:26:52 (Aug. 16, 2016).

<sup>3</sup> Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Order 16-307 at 1 (Aug. 18, 2016).

runs to vet PacifiCorp’s 2015 IRP data based on what the Coalition believes to be more reasonable and accurate inputs and assumptions. Specifically, the Coalition seeks information from PacifiCorp’s IRP System Optimizer model (“SO model”) and the Planning and Risk (“PaR”) model and copies of models themselves that PacifiCorp has used to calculate the next dates of deficiency. PacifiCorp refuses to provide the specific model runs requested by the Coalition. Additionally, PacifiCorp refuses to provide the Coalition access to the models themselves, absent unreasonable conditions. At this point, the Coalition is willing to either access the models themselves, or rely upon PacifiCorp performing limited and narrow model runs.

### III. LEGAL STANDARD

In a proceeding before the Commission, discovery is a matter of right, and the Commission follows the Oregon court rules of discovery, to the extent not inconsistent with the Commission’s administrative rules.<sup>4</sup> Under the Oregon Rules of Civil Procedure (“ORCP”), a party is entitled to discovery of any document that is relevant to a claim or defense.<sup>5</sup> Specifically, “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.”<sup>6</sup> Relevant evidence must: 1) tend to make the existence of any fact at issue in the proceedings more or less probable than it would be without the

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<sup>4</sup> OAR 860-001-0000(1); OAR 860-001-0500; Re Pacific Power & Light, dba PacifiCorp, Docket No. UE 177, Order No. 08-003 at 2 (Jan. 4, 2008); Re Portland General Elec. Co., OPUC Docket No. UE 102, Order No. 98-294 at 3 (July 16, 1998) (“[d]iscovery is a right afforded to parties in a legal proceeding by our rules and by the Oregon Rules of Civil Procedure, which we follow except where our rules differ.”).

<sup>5</sup> ORCP 36(B).

<sup>6</sup> Id.

evidence; and 2) be of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.<sup>7</sup>

In addition, although the Commission’s discovery rules in contested case proceedings generally prohibit unduly burdensome discovery, those rules expressly permit the development of information or preparation of a study for another party where “the capability to prepare the study is possessed uniquely by the party from whom discovery is sought.”<sup>8</sup> Finally, “[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence.”<sup>9</sup> The Oregon courts and the Commission have affirmed that the information sought need not be admissible itself, as long as it is reasonably calculated to lead to the discovery of admissible evidence.<sup>10</sup>

A party may move to compel production under ORCP 46 if the opposing party is not responsive to the discovery request. On a motion to compel, “an evasive or incomplete answer is to be treated as a failure to answer.”<sup>11</sup> The Commission expects parties to err “on the side of producing too much information . . . rather than too little.”<sup>12</sup>

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<sup>7</sup> OAR 860-001-0450.

<sup>8</sup> OAR 860-001-0500(4).

<sup>9</sup> ORCP 36(B).

<sup>10</sup> Baker v. English, 324 Or. 585, 588 n.3 (1997); Re Portland Extended Area Service Region, OPUC Docket No. UM 261, Order No. 91-958 at 5 (July 31, 1991).

<sup>11</sup> ORCP 46A(3).

<sup>12</sup> Re Portland General Electric Co., Docket No. UE 196, Order No. 09-046 at 8 (Feb. 5, 2009).

#### IV. ARGUMENT

##### 1. **Additional Model Runs are Relevant, Because PacifiCorp's IRP Assumptions Have Never Been Verified in a Contested Case Proceeding**

The Coalition has requested that PacifiCorp run additional SO and PaR models to investigate key issues in this case regarding the data inputs and assumptions used to determine PacifiCorp's current avoided cost rates, which are based upon its original 2015 IRP filing. These DRs may allow the Coalition to identify that PacifiCorp's assumptions, which are used to set rates, are in fact incorrect or outdated, and new rates should be established.

Relevant Coalition DRs include 1.2 and 1.3. Coalition DR 1.2 requested that PacifiCorp update Table 8.1 of its 2015 IRP and 2015 IRP Update to reflect both SB 1547's increased RPS requirements and the recently announced retirements of Naughton 3 in 2018 and Cholla 4 in 2025.<sup>13</sup> Coalition DR 1.3 requested PacifiCorp update Table 8.1 of its IRP to include SB 1547's increased RPS requirements, the recently announced retirements of Naughton and Cholla, and a cap on the amount of front office transactions at 13 percent for all new energy resources.<sup>14</sup>

PacifiCorp objected to the Coalition DRs 1.2 and 1.3 as being overly broad, unduly burdensome, and not reasonably calculated to the discovery of admissible evidence.<sup>15</sup> Additionally, PacifiCorp claimed that it did not have the data requested and that the Coalition's DRs require PacifiCorp to run additional sensitivities from its 2015 IRP.

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<sup>13</sup> Attachment A at 8.

<sup>14</sup> Id. at 9.

<sup>15</sup> Id. at 8 and 9.

The Commission has consistently maintained that parties have the right to challenge the inputs and assumptions used to set a utility's avoided cost rates.<sup>16</sup> The Commission has even “*encouraged* parties to seek suspension of an avoided cost filing when necessary to address concerns about natural gas forecasts, or any other aspect of a utility's filing.”<sup>17</sup> This expedited contested case proceeding underscores the Commission's direction to permit interested parties the opportunity to review and challenge the utility's inputs and assumptions.

The additional modeling is relevant to test the Coalition's claims in the non-contested case predecessor to this docket, which are the issues that are to be vetted now. The key issue in the previous, and this proceeding, is whether the estimated resource sufficiency/deficiency period dates that resulted from PacifiCorp's preferred portfolio in its IRP should be changed. One way to determine if those dates are accurate is to make different assumptions regarding resource operations and regulations, and then see what dates the IRP models estimate will be the dates for PacifiCorp's next thermal and renewable resource acquisitions.

Some of PacifiCorp's assumptions in its 2015 IRP were unreasonable at the time PacifiCorp selected its preferred portfolio. For example, the Coalition identified key

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<sup>16</sup> Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 12 (Feb. 24, 2014) (all inputs and assumptions should initially be drawn from the IRP); Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 36-37 (May 13, 2005) (gas price forecasts); Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 06-538 at 44 (Sept. 20, 2006) (gas price forecasts); Re Investigation into determination of resource sufficiency, pursuant to Order No. 06-538, UM 1396, Order No. 10-488 at 8 (Dec. 22, 2010) (resource sufficiency/deficiency).

<sup>17</sup> Re Investigation Relating to Electric Utility Purchases from QFs, Docket No. UM 1129, Order No. 06-538 at 44 (Sept. 20, 2006) (emphasis added).

assumptions that were inaccurate at the time PacifiCorp developed its 2015 IRP (excessive reliance on short-term contracts, inaccurate assumptions regarding coal plant operations, etc.).<sup>18</sup> The Coalition also pointed out that PacifiCorp’s next planned thermal and renewable resources did not receive any substantive review in the IRP process, in part because PacifiCorp’s estimates were outside of the company’s action plan period.<sup>19</sup> As such, PacifiCorp’s IRP and the Commission’s order acknowledging it did not address the issues of the specific year PacifiCorp must acquire its next major renewable and non-renewable generation resources.

Even assuming *arguendo* that the conclusions from the IRP were reasonable at the time, they are clearly outdated and inaccurate now in light of SB 1547’s increased RPS requirement and PacifiCorp’s subsequent announcements that it will be retiring Naughton 3 in 2018 and Cholla 4 in 2025.<sup>20</sup> PacifiCorp also demonstrated a desire to obtain renewable resources when it issued its renewable resource request for proposals in 2016, despite its stated intention in the QF proceedings of obtaining resources in what Commissioner Savage described as “20-never”.<sup>21</sup>

PacifiCorp’s lack of transparency violates due process, the rules of evidence, and fundamental fairness. A utility should not be allowed to rely on complex computer

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<sup>18</sup> Re PacifiCorp, dba Pacific Power, 2015 IRP, Docket No. LC 62, Coalition Comments at 1-6 (Oct. 15, 2016).

<sup>19</sup> Id. at 1.

<sup>20</sup> PacifiCorp is likely to continue to retiring coal plants ahead of schedule, and other coal plants are similarly like to shut down, including at least some of the Washington Colstrip units and the Rio Tinto Kennecott units. See: Robert Walton, Utah Regulators approve shuttering Kennecott’s 3 coal units ahead of schedule (Oct. 31, 2016) available at: <http://www.utilitydive.com/news/utah-regulators-approve-shuttering-kennecotts-3-coal-units-ahead-of-schedu/429370/>.

<sup>21</sup> Re PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities, Docket No. UM 1729, Public Meeting at 1:20:20 (Aug. 16, 2016).



modeling without providing full transparency into that model, so parties can see how it works. ALJ Arlow should order PacifiCorp to provide full and transparent access to its SO and PaR models as well as its input and output data used in its 2015 IRP.

Alternatively, if PacifiCorp cannot produce foundational evidence to support its model results, then it should not be allowed to use the model going forward. PacifiCorp cannot be allowed to rely on complex computer modeling results if it does not make the modeling available to interested parties.

The Coalition has consistently requested the opportunity to challenge and obtain Commission resolution of the date of renewable and non-renewable resource deficiency and the assumptions that PacifiCorp used to assume that it would not acquire a thermal resource until 2028 and that it would not acquire a renewable resource until more than 20 years. Now that Order No. 16-307 has provided the Coalition that opportunity, PacifiCorp has refused to permit the Coalition the opportunity to *actually* vet its data inputs and assumptions.

In short, the Coalition argues that PacifiCorp's assumptions have not been vetted and may not be accurate. It is reasonable to conclude that additional model runs would help vet PacifiCorp's data, as directed by the Commission, and determine whether PacifiCorp's claims are accurate. Thus, the information the Coalition is seeking is highly relevant in this proceeding.

## **2. PacifiCorp Has Special Expertise Running its Own Computer Models**

The fundamental question in this Motion is whether PacifiCorp should be allowed to avoid producing material within its possession – or within its unique position to produce. PacifiCorp contends that the Coalition's requests to update Table 8.1 are

unduly burdensome, but ignores the fact that it has a unique capability to develop the information requested. The Commission’s discovery rules direct parties with special expertise to help “develop information” for the record and even permit requiring a party with special expertise to “prepare a study for another party.”<sup>22</sup>

PacifiCorp agrees that it has special expertise to run its models, but argues that: “[t]he opportunity for parties to influence PacifiCorp’s model runs is in the Company’s IRP process, not in a separate proceeding after the IRP is completed. In fact, PacifiCorp is currently engaged in its 2017 IRP public input process.”<sup>23</sup> PacifiCorp appears to implicitly agree that it routinely performs additional model runs for parties in its IRP cases; however, the Company now objects to performing the same actions when the rubber hits the road and the IRP will be used to set actual rates rather than as a planning tool.

This argument fails for two reasons. First, these additional model runs that more accurately reflect PacifiCorp’s resource needs should have been done by PacifiCorp when it made its 2015 IRP filings. For example, in PacifiCorp’s 2015 IRP, the Coalition argued that PacifiCorp should have accounted for lower levels of short-term firm purchases, more rigorous environmental restrictions, and the closure of more coal plants.<sup>24</sup> This illustrates the reality that everyone is aware of: the Coalition has no control over what model runs PacifiCorp decides to perform. Had PacifiCorp been more

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<sup>22</sup> OAR 860-001-0500(4).

<sup>23</sup> Attachment A at 3.

<sup>24</sup> Re PacifiCorp 2015 IRP, Docket No. LC 62, Coalition Comments at 4-5 (Aug. 27, 2015); Re PacifiCorp 2015 IRP, Docket No. LC 62, Public Meeting at 1:23 (Dec. 17, 2015).

accurate originally and performed model runs based on the Coalition's positions in the 2015 IRP, then it may not have needed to do additional modeling in this proceeding.

Second, PacifiCorp's suggestion that testing how the IRP model would produce different dates of deficiency with different assumptions in the ongoing 2017 IRP proceeding would be too late and useless for the purposes of this proceeding. The 2017 IRP will not be filed for over a year, while the final order in this case is scheduled for April 14, 2017. The Commission has already concluded that this proceeding, which is after the 2015 IRP, is the time to challenge and test PacifiCorp's IRP assumptions.

PacifiCorp also claims that the Coalition's requests are unduly burdensome and should be rejected because the Coalition has not sought to work out less burdensome model runs with the Company. PacifiCorp claims that the Coalition's "request would require PacifiCorp's IRP staff to work on nothing but rerunning the 2015 IRP and 2015 IRP Update for at least an entire month, if not longer. This is unduly burdensome and simply not possible."<sup>25</sup> In response, the Coalition was (and remains) willing to work with PacifiCorp and narrow its request to reduce the Company's burden.<sup>26</sup> PacifiCorp, however, refused and is unwilling to do any model runs for the Coalition.

As described above, the information requested is highly relevant to the issues in this proceeding and PacifiCorp has special expertise in developing it. Thus, OAR 860-001-0500 directs PacifiCorp to provide the information requested by the Coalition.

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<sup>25</sup> Attachment A at 5.

<sup>26</sup> Id. at 3-4.

### 3. PacifiCorp's IRP Information is Not Highly Confidential

PacifiCorp expressed willingness to allow the Coalition to have access to its IRP model, but only at the PacifiCorp offices and under highly confidential protections.<sup>27</sup> As the Coalition's counsel explained by email on October 26, 2016, this is not a practical option for the Coalition and would be cost prohibitive. The Coalition's expert witnesses are not located in Portland and the Coalition is therefore not able to accommodate PacifiCorp's request.

PacifiCorp has not explained what specific information in its IRP model is highly confidential, so it is difficult for the Coalition to rebut any such claims. The Coalition, however, is aware that parties are routinely granted access to PacifiCorp's computer models and confidential data, and restricting access to review at the Company's offices is an extreme remedy. For example, PacifiCorp's GRID model – which is used to estimate power costs, set direct access transition adjustment charges and credits, and set some avoided cost rates – is provided free of charge, along with free training.<sup>28</sup>

The Coalition is unaware of parties being required to camp out in a utility's offices for days to run models, and requiring parties to view any information on site is an extremely rare remedy. For example, in Order No. 06-033, the Commission modified the its protective order process to create a "safe-room" discovery mechanism.<sup>29</sup> The safe room review was established to accommodate stakeholder review of "highly

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<sup>27</sup> Id. at 6.

<sup>28</sup> E.g., Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Order No. 16-174 at 2 (May 13, 2016) (directing PacifiCorp to "open access to its production cost model (GRID) and provide training and technical assistance upon request.").

<sup>29</sup> Re PacifiCorp, PGE, NW Natural, and Avista Filing of Tariffs Establishing Adjustment Clauses Under the Terms of SB 408, Docket No. UE 177, Order No. 06-033 at 5 (Jan. 25, 2006).

confidential” tax documents pursuant to SB 408. The Commission specifically chose to “emphasize that the circumstances surrounding this request are unique, and that this order should not be used as general precedent in support of the use of a safe-room discovery mechanism.”<sup>30</sup> PacifiCorp’s offer to allow the Coalition to run models in PacifiCorp’s office seems to conflate the confidentiality of its IRP data assumptions with that of the tax information required by SB 408. There should not be any IRP data assumptions that warrant the extreme remedy of requiring a consultant to move to Portland, and work out of the Company’s offices.

Moreover, if PacifiCorp believes its IRP data is worthy of additional protection, then the Company should seek a protective order from the Commission rather than refuse to provide relevant information that has been properly requested by the Coalition.

PacifiCorp has made no such filing, which would allow all the parties the opportunity to comment and the ALJ an opportunity to rule on the provisions of any such motion for extreme protections.

#### **4. PacifiCorp’s License Agreement or Arrangement with ABB Should Not Permit PacifiCorp to Avoid Providing Relevant Discovery Material**

In addition to receiving the specific data runs, the Coalition has requested that PacifiCorp provide access to PacifiCorp’s models. The relevant request is Coalition DR 11.4.<sup>31</sup> Coalition DR 1.4 requested complete and working copies of PacifiCorp’s IRP SO model and PaR model. PacifiCorp objected to Coalition DR 11.4 by alleging that the model is proprietary software provided to PacifiCorp under a license agreement with its

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<sup>30</sup> Id. These special circumstances occurred after confidential documents were leaked to the Willamette Week in a separate proceeding. See: Kristina Brenneman, Legal eagle eyes PGE deal (Jan. 10, 2005) available at: <http://portlandtribune.com/component/content/article?id=107655>.

<sup>31</sup> Attachment A at 10.

vendor, ABB. Additionally, PacifiCorp maintains that “per arrangement with ABB” it can only provide access to the models and documentation at PacifiCorp’s offices, but it provided no contract restricting its right to provide the requested information to intervenors through discovery in Commission proceedings. At this point, the Coalition only requests access to the models themselves if the Company does not perform additional runs.

This is a problem of PacifiCorp’s own creation, as the Company could have made other arrangements to allow parties in its regulated proceedings access to the models. PacifiCorp made the choice to use these specific models in its IRP, which the Company knew would be used to set avoided cost rates and would be subject to review and challenge by the stakeholders that are directly impacted by those rates. PacifiCorp then failed or refused to take steps to ensure that intervenors would be allowed to gain reasonable access to review and replicate PacifiCorp’s alleged modeling as well to produce alternative modeling results with alternative inputs. Absent such a right, PacifiCorp’s own self-serving results would always be the only results in the record whenever the question requires use of its model. PacifiCorp should not be permitted to essentially decide to prevent parties from having meaningful access to a self-selected model that addresses the fundamental issues in a regulatory proceeding.

PacifiCorp also suggested the Coalition work directly with its vendor to purchase a license and hire a consultant. The Coalition has contacted PacifiCorp’s vendor, who was not able to help the Coalition obtain pricing information or otherwise move forward with this option. The Coalition is also aware that other parties who have separately purchased model licenses have paid about \$30,000 for access to the SO model alone. As

explained above, in PacifiCorp’s recent transition adjustment mechanism case (UE 307), the Company provided free access to its GRID power cost model. The Industrial Customers of Northwest Utilities submitted an intervenor funding request for about \$10,000 to pay for its consultant in the entire case.<sup>32</sup> It appears that PacifiCorp wants the Coalition to pay approximately three times this cost just to gain access to a model to review and challenge the assumptions that will be used to set rates. This option is simply unreasonable and prohibitively expensive, which is one reason the Company may have made arrangements to limit access to its model.

The Commission has considered these issues before and determined that utilities should provide access to proprietary computer modeling. Specifically, the Commission decided utilities “cannot prevent discovery of relevant information central to the outcome of this proceeding simply because they chose to have the data developed by a third party.”<sup>33</sup> In addition, the Commission noted, “it is contrary to the public interest to require parties to Commission proceedings (and potentially the Commission itself) to pay for discovery.”<sup>34</sup> By suggesting the Coalition purchase its own license to PacifiCorp’s computer models, the Company is effectively creating a third-party barrier to relevant data and then requiring parties to pay for the discovery of that data.

In short, PacifiCorp cannot have it both ways and should either provide the specific runs requested, or access to the models themselves. Moreover, PacifiCorp

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<sup>32</sup> Re PacifiCorp, dba Pacific Power, 2017 Transition Adjustment Mechanism, Docket No. UE 307, ICNU Request for Issue Fund Grant and Proposal Budget at 5 (May 18, 2016).

<sup>33</sup> Re Qwest Corp., Investigation to Review Costs and Establish Prices for Certain Unbundled Network Elements provided by Qwest Corp., Docket No. UM 1025, Order No. 03-533, at 9-10 (Aug. 28, 2003).

<sup>34</sup> Id. at 10.

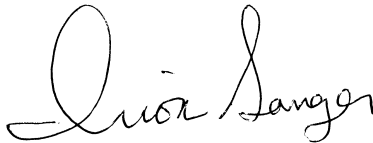
undermines its own argument that the Coalition's data requests are unduly burdensome by offering to allow the Coalition's expert access to the PacifiCorp office to run the models themselves. Furthermore, by suggesting the Commission's safe room access as a reasonable concession, PacifiCorp acknowledges that allowing the Coalition access to the models does not violate its licensing agreement. The Coalition notes that any additional "arrangements" made with ABB to preclude access to PacifiCorp's IRP modeling should augment PacifiCorp's duty to provide the specific mode runs requested.

## V. CONCLUSION

For the reasons discussed above, the Coalition respectfully requests that the ALJ Arlow require PacifiCorp to provide complete responses to Coalition DRs 1.2, 1.3, and 1.4.

Dated this 31st day of October, 2016.

Respectfully submitted,



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Of Attorneys for Renewable Energy Coalition



# **ATTACHMENT A**



**From:** Irion Sanger [irion@sanger-law.com](mailto:irion@sanger-law.com)  
**Subject:** Re: UM 1794  
**Date:** October 31, 2016 at 11:08 AM  
**To:** Apperson, Erin [Erin.Apperson@pacificcorp.com](mailto:Erin.Apperson@pacificcorp.com)  
**Cc:** Sidney Villanueva [sidney@sanger-law.com](mailto:sidney@sanger-law.com)

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Erin

Absent unexpected events, our plan is to file the motion to compel today.

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**From:** "Apperson, Erin" <[Erin.Apperson@pacificcorp.com](mailto:Erin.Apperson@pacificcorp.com)>  
**Date:** Monday, October 31, 2016 at 11:06 AM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** Sidney Villanueva <[sidney@sanger-law.com](mailto:sidney@sanger-law.com)>  
**Subject:** RE: UM 1794

Irion – I wanted to clarify that this timing and agreement would be based upon REC filing its motion today.

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**From:** Apperson, Erin  
**Sent:** Monday, October 31, 2016 11:05 AM  
**To:** 'Irion Sanger'  
**Cc:** Sidney Villanueva  
**Subject:** RE: UM 1794

Irion,

PacifiCorp understands the need to expedite resolution of this discovery dispute. Therefore, PacifiCorp would be willing to shorten its response time from fifteen days to seven days (due Nov. 7) if REC similarly agrees to shorten its reply time from seven days to three days (due Nov. 10).

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**Sent:** Friday, October 28, 2016 5:14 PM  
**To:** Apperson, Erin  
**Cc:** Sidney Villanueva  
**Subject:** [INTERNET] Re: UM 1794

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Erin

I am not sure how running model runs in the 2017 IRP is relevant because they would provide no assistance to REC in this proceeding.

We have contacted ABB, and they were not able to help us in obtaining pricing information or otherwise move forward with this option. We have also inquired with others who have used the

otherwise move forward with this option. We have also inquired with others who have used the model in the past, and our understanding is that it would be cost prohibitive for a party on its own that does not have an existing relationship with the vendor to enter into a separate agreement.

We plan to file a motion to compel on Monday. Please let me know what expedited dates you are willing to agree to.

**Irion Sanger**

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**From:** "Apperson, Erin" <[Erin.Apperson@pacificorp.com](mailto:Erin.Apperson@pacificorp.com)>  
**Date:** Thursday, October 27, 2016 at 4:18 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** Sidney Villanueva <[sidney@sanger-law.com](mailto:sidney@sanger-law.com)>  
**Subject:** RE: UM 1794

Irion,

PacifiCorp understands REC's position on these requests and maintains its objections to performing the model runs. You have outlined only two of REC's options in your email below, but as PacifiCorp has stated, REC can also pursue the option of working directly with the vendor ABB.

PacifiCorp has an extensive stakeholder process in preparation for its IRP, which includes numerous public input meetings and technical workshops. The opportunity for parties to influence PacifiCorp's model runs is in the Company's IRP process, not in a separate proceeding after the IRP is completed. In fact, PacifiCorp is currently engaged in its 2017 IRP public input process.

Let me know when you would like to discuss timing for next steps.

Erin Apperson  
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PacifiCorp  
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**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Thursday, October 27, 2016 1:57 PM  
**To:** Apperson, Erin  
**Cc:** Sidney Villanueva  
**Subject:** [INTERNET] Re: UM 1794

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Erin

Thanks for your response.

Without addressing your other points at this time, I wanted to make it clear that REC is willing to work with PacifiCorp to limit the model runs. REC's position is that PacifiCorp cannot rely upon the outputs of a computer model to set rates without either: 1) conducting a reasonable number of model runs to test the outcome of REC's recommendations; or 2) provide access to the model at no cost (other than our internal employee costs to run the model at their place of business). We are willing to try work with PacifiCorp to come up a reasonable number of runs.

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**From:** "Apperson, Erin" <[Erin.Apperson@pacificorp.com](mailto:Erin.Apperson@pacificorp.com)>  
**Date:** Wednesday, October 26, 2016 at 1:52 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** Sidney Villanueva <[sidney@sanger-law.com](mailto:sidney@sanger-law.com)>  
**Subject:** RE: UM 1794

Irion,

Thank you for reaching out. You are correct that PacifiCorp stands by its objections to REC Data Request 1.2 and REC 1.3 from its responses sent to REC on October 14 in UM 1794. In REC's Data Requests 1.2 and 1.3, REC asks PacifiCorp to rerun every top performing portfolio from PacifiCorp's 2015 IRP and 2015 IRP Update. Responding to this request would require PacifiCorp's IRP staff to work on nothing but rerunning the 2015 IRP and 2015 IRP Update for at least an entire month, if not longer. This is unduly burdensome and simply not possible. This is even more unreasonable given that PacifiCorp is in the middle of preparing its 2017 IRP and running its stakeholder outreach process.

As PacifiCorp articulated in its response to REC Data Request 1.4, the requested models are proprietary software provided to PacifiCorp under a license with ABB. If REC seeks to rerun numerous portfolios from PacifiCorp's 2015 IRP and 2015 IRP Update, it may pursue the option of working with the vendor to purchase a license and hiring a consultant.

Regarding expedited consideration, PacifiCorp appreciates the need to resolve this discovery dispute quickly and efficiently while giving both parties a reasonable and fair opportunity to present arguments. Depending on when REC files its motion to compel, PacifiCorp could be willing to shorten its response time from fifteen days to eight days if REC similarly agrees to shorten its reply time from seven days to four days. Please let me know when REC intends to file the motion and we can hopefully reach agreement on the appropriate expedited timeframe.

Regarding REC's desire to amend the procedural schedule, it is premature to discuss changes. Any discussion regarding the procedural schedule would necessarily prejudice the outcome of the unresolved discovery disputes in REC's or CREA's favor.

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**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Wednesday, October 26, 2016 7:14 AM  
**To:** Apperson, Erin  
**Cc:** Sidney Villanueva  
**Subject:** [INTERNET] UM 1794

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Erin

I am sending this email about the discovery dispute regarding the Renewable Energy Coalition's first set of data requests. We have spoken once on the phone, and traded phone messages. As I understand things, PacifiCorp is not willing to perform IRP model runs for REC, and PacifiCorp is not willing to provide REC a copy of the IRP models. PacifiCorp is willing to allow REC to have access to the model, but only at the PacifiCorp's offices and under highly confidential protections. This is not a practical option for REC and would be cost prohibitive. I would be happy to discuss further with you if there is a possibility of reaching a compromise, but absent either the company running the model or REC gaining practical access to the model, REC intends to file a motion to compel.

REC intends to ask for expedited consideration, and I would like to discuss if we can reach mutually agreeable shortened response dates. Even with shortened response times, I do not believe there will be sufficient time after obtaining an order for REC to complete its testimony. Thus, we are likely to request for an extension of time to file our testimony, the dates would largely be based on when resolution is reached regarding CREA's separate motion to compel, and REC's motion to compel on the models. We also need access to the information CREA is requesting to prepare our testimony. I wanted you to be fully aware of our scheduling plans before you agreed to any expedited consideration.

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October 17, 2016

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RE: OR Docket No. UM-1794  
REC 1<sup>st</sup> Set Data Request (1-4)

Please find enclosed PacifiCorp's Responses to REC's 1<sup>st</sup> Set Data Requests 1.1-1.14. Also provided is Attachment REC 1.1.

If you have any questions, please call me at 503-813-6583.

Sincerely,

A handwritten signature in cursive script, appearing to read "Natasha Siores".

Natasha Siores  
Pacific Power Regulation

C.c.: Gregory M. Adams/CREA [greg@richardsonandoleary.com](mailto:greg@richardsonandoleary.com)



### **REC Data Request 1.2**

Please refer to PacifiCorp's 2015 integrated resource plan (IRP) Table 8.1 at 182, and IRP Update at 2-3. Please provide an updated Table 8.1 assuming: 1) the increased renewable portfolio standard requirements in SB 1547; and 2) the retirements of Naughton 3 in 2018, and Cholla 4 in 2025. Provide all supporting work papers.

### **Response to REC Data Request 1.2**

PacifiCorp objects to this request as unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and as requiring information not maintained in the normal course of business or development of a special study. Without waiving these objections, the Company responds as follows:

PacifiCorp does not have the data requested in its possession. The information requested would require PacifiCorp to run additional sensitivities from its 2015 integrated resource plan (IRP), which was acknowledged by the Public Utility Commission of Oregon (OPUC) on February 29, 2016.

### **REC Data Request 1.3**

Please refer to PacifiCorp's 2015 integrated resource plan (IRP) Table 8.1 at 182, and IRP Update at 2-3. Please provide an updated Table 8.1 assuming: 1) the increased renewable portfolio standard requirements in SB 1547; 2) the retirements of Naughton 3 in 2018, and the Cholla 4 in 2025; and 3) for each portfolio listed in table 8.1, cap the amount of front office transactions at 13% of all energy from new resources. Provide all supporting work papers.

### **Response to REC Data Request 1.3**

PacifiCorp objects to this request as unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and as requiring information not maintained in the normal course of business or development of a special study. Without waiving these objections, the Company responds as follows:

PacifiCorp does not have the requested data in its possession. The information requested would require PacifiCorp to run additional sensitivities from its 2015 integrated resource plan (IRP), which was acknowledged by the Public Utility Commission of Oregon (OPUC) on February 29, 2016.

UM 1794 / PacifiCorp  
October 17, 2016  
REC Data Request 1.4

**REC Data Request 1.4**

Please provide complete and working copies of PacifiCorp's IRP System Optimizer and PaR models.

**Response to REC Data Request 1.4**

The System Optimizer model (SO Model) and the Planning and Risk (PaR) model are proprietary software provided to PacifiCorp under a license agreement with ABB. The Company can only provide access to the models and documentation at the Company offices on a highly confidential basis per arrangement with ABB. Note: PacifiCorp is using the same software as it has in the past from VENTYX however, VENTYX has since been acquired by ABB.