

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP, dba PACIFIC)	Docket No. UM 1794
POWER,)	
)	REQUEST FOR ALJ CERTIFICATION
Investigation into Schedule 37 - Avoided Cost)	BY THE COMMUNITY RENEWABLE
Purchases from Qualifying Facilities of 10,000)	ENERGY ASSOCIATION AND
kW or Less.)	RENEWABLE ENERGY COALITION
)	
)	
_____)	

I. INTRODUCTION

Pursuant to OAR 860-001-0110, the Community Renewable Energy Association (“CREA”) and Renewable Energy Coalition (“Coalition”) (jointly, “Joint QF Parties”) respectfully request that Administrative Law Judge (“ALJ”) Allan Arlow certify the ruling issued November 2 (“Ruling”) in the above-captioned contested case proceeding before the Oregon Public Utility Commission (“Commission” or “OPUC”). The Commission directed this case in recognition of the fact that parties had not had an opportunity to vet the data used to support the 2028 sufficiency/deficiency demarcation dates for renewable and non-renewable rates. The Ruling denies the Joint QF Parties the opportunity to access data relevant to the 2028 demarcation dates. Thus, the Joint QF Parties submit that good cause exists for certification. Attachment A includes the pleadings and communications leading up to this dispute.

II. SUMMARY OF DISPUTE

The avoided cost rates at issue in this proceeding were first reviewed in UM 1729. The Commission suspended PacifiCorp’s rates, and directed the parties to address their reasonableness in that non-contested case proceeding. CREA sought and was denied discovery

in the predecessor docket UM 1729 regarding the reasonableness of the proposed rates on the grounds that PacifiCorp's Application to Update Schedule 37 was not a contested case.

The Commission adopted the currently effective rates in UM 1729, and opened this new proceeding (UM 1794) to provide an expedited contested case proceeding "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." Order No. 16-307. When the Commission approved PacifiCorp's filing, it did so with the express direction to also permit an expedited vetting of the issues raised in UM 1729, including the applicable dates of resource deficiency, the reasonableness of the inputs and assumptions of the rates, and the impact of post-IRP acknowledgement events like SB 1547, PacifiCorp's renewable request for proposal ("2016 Renewable RFP") and the closure of coal plants.

After ALJ Arlow issued the contested case notice in this docket, CREA promptly sought discovery into relevant areas including information regarding the 2016 Renewable RFP and internal documents supporting PacifiCorp's ultimate course of action in the RFP (data requests 1.1 through 1.7) and the RPIP information (data request 1.11). *See* Attachment A. PacifiCorp refused to provide any discovery, and objected to CREA's data requests on September 23, 2016. CREA requested resolution of the discovery dispute before ALJ Arlow on October 4, 2016.

The discovery dispute was initially resolved in CREA's favor during an informal conference, but has since been denied. ALJ Arlow informally determined that all of CREA's requested information was relevant and PacifiCorp's objections to providing complete responses lacked merit on October 6, 2016. Rather than provide the relevant data, however, PacifiCorp filed a motion for clarification or certification on October 12, 2016. CREA filed a response and

motion to compel on October 19, 2016. Ultimately, ALJ Arlow issued a clarification formally denying CREA's motion to compel with respect to PacifiCorp's RFP and RPIP information on November 2. Joint QF Parties file this request for certification to place the issue of relevancy before the Commission.

III. ARGUMENT

ALJ Arlow's Ruling on PacifiCorp's RFP information has several infirmities. First, it appears to rely upon OPUC staff ("Staff") recommendations to determine the scope of this proceeding rather than applying the correct legal standard for relevance. Second, the Ruling implicitly suggests almost everyone (the Commission itself, Staff, and PacifiCorp) can suggest updating avoided cost inputs and assumptions based on events subsequent to PacifiCorp's 2015 IRP, while simultaneously denying that right to other parties (CREA and REC). Third, the Ruling maintains that PacifiCorp did not use the RFP results in the UM 1729 proceeding, which is incorrect given PacifiCorp's arguments made at the August 16, 2016 public meeting that resulted in Order No. 16-307. Finally, the Ruling describes CREA's request for RPIP information as "premature" and suggests resolution will occur when a "specific disagreement occurs."

1. Legal Standard

In this contested case proceeding, discovery is a matter of right. Parties are entitled to discovery of any unprivileged document that is relevant to a claim or defense of either party. ORCP 36(B). Evidence is relevant if it either tends to make the existence of any fact at issue more or less probable than it would be without that evidence, and must be of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs. OAR 860-001-

450. Evidence sought need not be admissible, if it is reasonably calculated to lead to the discovery of admissible evidence.

Parties may appeal to the Commission within 15 days of an ALJ ruling by requesting the ALJ certify the ruling for the Commission’s consideration. OAR 860-001-0110. The ALJ must certify the ruling if it may result in substantial detriment to the public interest or undue prejudice to a party or if “good cause exists for certification.” *Id.*

Two important aspects of Order No. 16-307 directly impact the scope of this proceeding and result in substantial detriment to the public interest and undue prejudice to CREA and REC. First, the Commission ordered PacifiCorp to file new avoided costs with prices based on renewable and non-renewable deficiency periods beginning in 2028, based largely upon cost and performance data from PacifiCorp’s 2015 IRP. *See* Order No. 16-307. The current avoided cost rates are not based entirely upon the 2015 IRP because they include updated gas prices, changed assumptions regarding the Production Tax Credit (“PTC”), and (most importantly) an earlier renewable deficiency date based on the impacts of SB 1547. Second, the Commission also contemporaneously directed: “an expedited contested case proceeding shall 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.”¹ *Id.* Thus, all of the issues raised in the earlier UM 1729 proceeding, as well as any issues relating to possible revisions to PacifiCorp’s current avoided cost prices, are squarely within the scope of the current proceeding.

¹ In that same order, Staff also suggested PacifiCorp’s “upcoming [Renewable Portfolio Standard Implementation Plan (“RPIP”)] process may provide the Commission and stakeholders an opportunity to vet an updated renewable deficiency period and renewable resource cost and performance inputs.” Order No. 16-307 at Appendix A at 7-8.

One major issue addressed in UM 1729 was how PacifiCorp's Renewable RFPs should affect its renewable sufficiency/deficiency demarcation date.² Staff, the Commissioners, and parties all addressed whether PacifiCorp's Renewable RFPs called into question the validity of the Company's claims that it would not be renewable deficient within the planning horizon of its 2015 IRP. At the Public Meeting that resulted in Order 16-307, Commissioner Savage noted to PacifiCorp, "you were arguing at that time that it should be 2038 *knowing* that you had an RFP, so—." Public Meeting at 1:22:00 (Aug. 16 2016). Staff recommended setting the renewable date at 2018 at that meeting based on the fact that PacifiCorp had issued a the 2016 Renewable RFP. Commissioner Savage explained, "I'll be honest, I'm struggling with the sufficiency/deficiency date. I don't believe its twenty-never and I don't believe its 2018." *Id.* at 1:20:20 (Aug. 16 2016). Commissioner Bloom immediately replied, "I don't either." *Id.*

PacifiCorp's 2016 Renewable RFP is relevant given the prominent role it played in setting its sufficiency/deficiency demarcation date. Yet the Ruling concludes the entire RFP process was not relevant. The Ruling notes that Staff did not support the use of PacifiCorp's RFP to support the avoided cost price update. Ruling at 2. Next, the Ruling summarily concludes, "[t]hus, Order No. 16-307 removed the [discussion of any bids submitted or reviewed by the company after the 2016 IRP from consideration in the next phase of the proceeding." *Id.* at 3. The Ruling does not explain why Staff's recommendation that was not adopted in the previous docket might limit the scope in this docket.

The Ruling does not fully explain the basis for Staff's recommendation not to rely of PacifiCorp's 2016 Renewable RFP data and fails to recognize that Staff's recommendation did

² The underlying prices of the proxy resource (deemed relevant in the Ruling) and PacifiCorp's RPIP (not deemed relevant in the Ruling) were also addressed in UM 1729.

not remove the RFP data from the scope of this proceeding. Staff recommended that there be further investigation, and that the Commission set rates using the 2015 acknowledged IRP (rather than the 2015 IRP Update or 2016 Renewable RFP), with the exception that the renewable deficiency date be set at 2018. Order No. 16-307 did not adopt Staff's recommendation, but set the renewable deficiency date at 2028 and opened a proceeding that would address all issues raised. To limit the parties to not proposing changes after the 2015 IRP would be tantamount to determining that because Staff recommended a 2018 demarcation date there should be no further discussion about the resource deficiency/sufficiency year—while completely ignoring the fact that the Commission opted for a 2028 date instead of following Staff's recommendation.

The Ruling's conclusion 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" also misstates the grounds for relevancy. Ruling at 3. PacifiCorp justified its proposed avoided cost rates in UM 1729 based on the results of its 2016 Renewable RFP. The parties should have the opportunity to rebut PacifiCorp's claims and vet whether they were accurate.

In summary, because the parties specifically argued in UM 1729 as to whether the RFP data made the 2028 demarcation date more or less probable, and the Commission opened this proceeding to vet all the issues raised in UM 1729, the RFP data is relevant. Any other conclusion mistakes the legal test for relevancy.

2. The Commission, PacifiCorp, and Staff Recommended Other Post-IRP Updates

The Ruling seems to suggest that only PacifiCorp's 2015 IRP data and assumptions, which have also been recommended by Staff, are relevant in the current proceeding. For

example, the Ruling endorses PacifiCorp's position that the entire RFP process occurred after the 2015 IRP as evidence that it is not relevant. Ruling at 3. This ignores that there have been other recommendations to look beyond PacifiCorp's 2015 IRP, as well as the fact that the currently approved rates are based on changes following the 2015 IRP.

Both the Commission and Staff have used post-IRP information to update PacifiCorp's avoided cost filing. The Commission directed parties to re-consider how the passage of SB 1547, which occurred after the 2015 IRP, affected PacifiCorp's need for renewable resource acquisition. Moreover, Staff has also recommended using PacifiCorp's March 2016 updates to its gas and electric forward price curves, as well as the current PTC. These updates occurred after the 2015 IRP and yet there is no basis that certain parties should be permitted to consider events that have occurred since PacifiCorp's 2015 IRP, while other parties be confined to the original time frame.

Finally, the Ruling itself contradicts this reasoning by determining that PacifiCorp's Wyoming Wind assumptions from its 2015 IRP Update are relevant. One of the most critical disputed issues in setting PacifiCorp's avoided costs in this proceeding and the precursor proceedings has been the proper cost assumptions for PacifiCorp's next avoidable wind facility. The Ruling notes that the costs in PacifiCorp's unacknowledged 2015 IRP Update are relevant, despite the fact that they are not from PacifiCorp's acknowledged 2015 IRP. There is no basis to only limit the relevant data to one type of post-2015 acknowledged IRP data (the 2015 IRP Update) not another type of post-2015 acknowledged IRP data (the 2016 Renewable RFP).

3. PacifiCorp Itself Used the RFP Information to Support its Claims

The 2016 Renewable RFP information requested is inextricably intertwined with direct assertions PacifiCorp made to the Commission in support of its avoided cost filing. Although CREA outlined this connection in its previous motion, the Ruling adopts PacifiCorp's statement that "neither the Company nor the Commission relied on the RFP bid information to sets PacifiCorp's avoided cost prices in the UM 1729(1) proceeding." Ruling at 2; PacifiCorp Response at 5. This is simply incorrect.

The requested RFP information was placed in issue by PacifiCorp to support its argument that the 2015 IRP information was still accurate because PacifiCorp pointed to the RFP results as a basis to corroborate its 2015 IRP. At the August 16 Public Meeting, Rick Link opened his comments by stating, "We are trying to establish prices that meet the indifference standard under PURPA." Public Meeting at 42:55 (Aug. 16, 2016). Mr. Link continued,

We've now **gone through the RFP process and have learned things through that process that were not even available to us since we made our [2015 IRP Update filing] in June.** And so I think where we are today, if we kind of level-set back to trying to get to a true avoided cost that meets the indifference standard with the facts as we see it, what really makes the most sense from the Company's perspective goes all the way back to the Company's initial [2015 IRP] March filing. **We have gone through an RFP process** . . . and in fact the Company will not be pursuing any near term resources with a 2018 online date as a result of that RFP, and so, the 2018 deficiency/sufficiency demarcation period based on what we know today doesn't really get back to an indifference standard.

Id. (emphasis added) After nearly an hour of discussion on PacifiCorp's sufficiency/deficiency demarcation date, Mr. Link concluded,

I think under the Staff's proposal it's just important for the Commission to at least hear from the Company that those rates for standard renewable avoided cost prices, would be *significantly* higher than the precise opportunities that we just turned down through the RFP process. Not by a dollar, or a few cents, quite a bit higher.

Id. at 1:25:35. Sarah Kamman supported Mr. Link's suggestion that its 2015 IRP filing presented the most accurate avoided costs by stating,

Back in March, we thought, we don't know, there's a lot of uncertainty out there and we don't know if SB 1547 or our RFP warrants a deviation from your established processes, and what we're saying is that what we've learned in the interim is that there's nothing to justify a deviation from the Commission's standard practice of using an acknowledged IRP.

Id. at 1:21:15.

So, PacifiCorp presented the results of its RFP to the Commission on July 26, 2016, and then weeks later specifically argued that the results of that RFP process supported their claim that the original 2015 IRP filing remained the most accurate avoided cost pricing. In addition to supporting its own claims, PacifiCorp also used the RFP bid data to suggest Staff's recommendation was not accurate and did not maintain the indifference standard under PURPA. These arguments were made mere minutes before the Commission's determination to set PacifiCorp's demarcation date at 2028. The Commission almost certainly considered these statements when making its determination. Thus, permitting PacifiCorp and the Commission to have access to this highly relevant information, without permitting other parties access to that same data would unduly prejudice the Joint QF Parties in this proceeding.

Finally, the RFP information is relevant and potentially useful for multiple additional reasons aside from the reasons PacifiCorp itself already used it. For example, CREA's data request 1.7 requests the cost assumptions for Bonneville Power Administration transmission used for purposes of evaluating RFP bids, which may enable CREA to develop its own proposal for the avoided cost rates with inclusion of an appropriate transmission cost adder to the avoided costs for an Oregon wind farm. And CREA's data request 1.6 requests all documents provided

to PacifiCorp's executive officers and board of directors regarding its decision not to acquire a physical resource in the RFP, which obviously may provide insights into PacifiCorp's actual resource sufficiency position beyond the statements made in its IRPs and filings at the OPUC. PacifiCorp itself argued no basis to withhold such documents or a privilege log listing the materials it claims to be privileged. Furthermore, the RFP information is potentially useful and relevant for the independent reason to test the truth of the allegations PacifiCorp made earlier in this proceeding. If PacifiCorp or its witnesses misled or withheld material facts in making assertions about the RFP bid results and current market conditions, that fact would be useful for impeachment of the credibility of PacifiCorp and its witnesses in the current proceeding.

4. Staff suggested RPIP Information Could Vet PacifiCorp's Avoided Cost Filing

The Ruling states that CREA's request for RPIP information is "premature" in this proceeding and should be addressed when "a specific disagreement occurs." Joint QF Parties contend that a specific disagreement has already occurred, which is why CREA asked ALJ Arlow to compel discovery. To be clear, Staff recommended using PacifiCorp's RPIP materials "to vet an updated renewable deficiency period and renewable resource cost and performance inputs" in Order No. 16-307. Order No. 16-307 at Appendix A at 8. CREA requested PacifiCorp RPIP materials (data request 1.11). Although there has been discovery in PacifiCorp's RPIP proceeding, PacifiCorp objected to providing those materials (response to data request 1.11). Thus, the specific disagreement, which has already occurred, is whether the Joint QF Parties may use the RPIP materials to vet PacifiCorp's avoided cost filing.

Illustrative examples may be helpful in evaluating the relevancy of both PacifiCorp's RPIP and RFP data. An RPIP is a proceeding to ascertain what PacifiCorp's renewable portfolio

standard implementation plan is, including when it will acquire its next renewable resource and what the costs this renewable resources are. These are central issues in this proceeding and may be relevant. Similarly, there could be internal memoranda addressing PacifiCorp's decision not to go forward with a physical resource in its RFP. Such a memo could have been prepared during either the RFP or RPIP process and would supplement or explain PacifiCorp's long-term planning decisions made apart from its IRP process. This type of memo would obviously be relevant and should be compelled, if it exists. Joint QF Parties argue that any decisions made on resource cost and timing of PacifiCorp's next renewable resource is relevant to determining whether its current avoided costs are accurate.

IV. CONCLUSION

For the reasons described above, the Joint QF Parties respectfully request that ALJ Arlow certify the November 2 Ruling for the Commission's consideration.

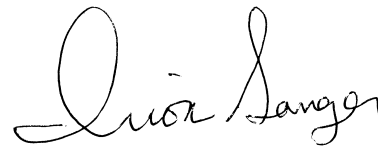
RESPECTFULLY SUBMITTED this 17th day of November, 2016.

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/s/ Gregory M. Adams

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Attachment A - Prior Filings

- 1) CREA'S Request for Informal Resolution
- 2) Correspondence Prior to Informal Conference
- 3) PacifiCorp's Motion for Clarification or Certification
- 4) CREA's Response AND Motion to Compel
- 5) PacifiCorp's Response

Attachment 1

CREA's Request for Informal Resolution

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP, dba PACIFIC POWER,)	Docket No. UM 1794
)	
Investigation into Schedule 37 - Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less)	REQUEST FOR INFORMAL RESOLUTION OF DISCOVERY DISPUTE BY THE COMMUNITY RENEWABLE ENERGY ASSOCIATION
)	
)	
)	

I. INTRODUCTION

The Community Renewable Energy Association (“CREA”) respectfully requests that the Administrative Law Judge (“ALJ”) resolve a discovery dispute, under OAR 860-001-0500(6) between CREA and PacifiCorp in the above-captioned contested case proceeding before the Oregon Public Utility Commission (“Commission” or “OPUC”). As explained below, even though ALJ Allan Arlow issued a contested case order on September 8, 2016, PacifiCorp has refused to respond to any data requests lodged by CREA until after October 14, 2016, which is the due date for PacifiCorp’s opening testimony. PacifiCorp’s intentional delay tactic has already compromised CREA’s ability to plan and develop its own testimony, which must be filed on November 18, 2016. Accordingly, CREA respectfully requests a telephone conference with ALJ Arlow this week to compel PacifiCorp to provide complete responses to CREA’s first set of data requests, as described below.

II. SUMMARY OF DISPUTE

This is a proceeding to set PacifiCorp’s avoided cost rates, which PacifiCorp first initiated after acknowledgement of its 2015 Integrated Resource Plan (“IRP”). This proceeding

to update the avoided costs was initially docketed as UM 1729, and the Commission initially rejected PacifiCorp's proposed rates on the ground that the assumptions underlying them in the IRP had been superseded by passage of Senate Bill 1547. *See* Order No. 16-117. The Commission directed the parties to "work together and propose an expedited and non-contested case process to update PacifiCorp's avoided costs in light of the passage of SB 1547." *Id.* The negotiations failed, however, and PacifiCorp filed a Supplemental Application on June 21, 2016, proposing to use its unacknowledged 2015 IRP Update as the basis for the inputs to the proxy resource assumptions and asserting that preliminary bids into a request for proposals ("RFP") supported its proposed avoided costs.

On June 22, 2016 and June 23, 2016, CREA filed two sets of data requests seeking to obtain supporting information supporting PacifiCorp's factual allegations regarding the RFP bids and RFP evaluations assumptions. PacifiCorp objected to providing the requested information on the grounds that the proceeding was not a contested case and that the information requested is confidential. However, in this same timeframe, on July 26, 2016, PacifiCorp also engaged in a special presentation to the Commission regarding the bids and evaluation of the then-ongoing RFP, but much of this material was designated as confidential and withheld from public disclosure or use in Commission dockets. On July 29, 2016, therefore, CREA requested informal dispute resolution to obtain the material it had requested. But ALJ Grant declined to require PacifiCorp to produce any material in discovery on the ground that the proceeding docketed as UM 1729 was not a contested case.

On August 16, 2016, the Commission addressed PacifiCorp's proposed avoided costs at the Commission's public meeting. However, since CREA and other parties had been provided

no discovery, they were effectively unable to confirm or attempt to disprove PacifiCorp's factual assertions in its Supplemental Application. Furthermore, PacifiCorp changed its position at the public meeting and presented a whole new theory of its avoided costs from that presented in its Supplemental Application. The Supplemental Application proposed a renewable resource deficiency date of 2018 and relied upon alleged bids for an Oregon wind farm into the RFP as the basis to set the proxy resource costs. In contrast, at the public meeting, PacifiCorp argued that it would not be renewable deficient until at least 2028 (or later). CREA pointed out at the public meeting that it could not respond to PacifiCorp's initial or revised arguments because CREA had been denied discovery rights regarding PacifiCorp's avoided costs.

The Commission ordered PacifiCorp to file new avoided costs with prices based on renewable and non-renewable deficiency periods beginning in 2028 based on the cost and performance data from its 2015 IRP, i.e. *not* the 2015 IRP Update or the RFP bids. *See* Order No. 16-307. However, recognizing that other parties had no opportunity to vet all available data, the Commission further directed: "an expedited contested case proceeding *shall 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.*" *Id.* (emphasis added).

On August 22, 2016, PacifiCorp filed its revised avoided cost rates in compliance with Order No. 16-307. The renewable rates are set based upon the assumption that PacifiCorp would build a wind farm in Wyoming in 2028 with a higher capacity factor and lower avoided costs than the previously discussed Oregon wind farm, even though Order No. 16-307 and PacifiCorp's prior arguments and data sets did not advocate for a Wyoming wind farm. *See PacifiCorp's Compliance Filing*, Docket No. UM 1729 (Aug. 22, 2016). Those rates are

currently in effect, and it appears they will remain in effect unless and until the Commission orders a revision in this proceeding.

On August 26, 2016, the Commission reassigned this proceeding to the newly created docket UM 1794, and CREA orally petitioned to intervene as a party shortly thereafter at the prehearing conference. On September 8, 2016, ALJ Arlow issued the prehearing conference memorandum, which, *inter alia*, memorialized the rulings granting CREA's petition to intervene as a party with full contested case rights and approved the schedule proposed by the parties.

On September 9, 2016, CREA served its first set of data requests to PacifiCorp. Data requests 1.1 through 1.7 sought much of the information regarding the RFPs that had been withheld during the non-contested case in UM 1729 and internal documents supporting PacifiCorp's ultimate course of action in the RFP. Additionally, data requests 1.8 and 1.9 sought information regarding the assumptions and support for use of a Wyoming wind farm as the proxy resource, as exists in the currently effective avoided cost rates. Data requests 1.10 and 1.11 requested information and documents related to PacifiCorp's need for renewable resources, including inconsistent statements made to the legislature and documents produced in the renewable implementation plan docket. The data requests and PacifiCorp's responses are provided as Attachment 1 to this submission.

PacifiCorp and CREA engaged in a telephone call during the week of September 19, 2016, due to PacifiCorp's indication that it intended to object to some of the data requests. Counsel for CREA offered to walk through individual requests with counsel for PacifiCorp if clarification was necessary or if PacifiCorp believed that producing all of the requested material would be too burdensome. However, counsel for CREA indicated that it was not willing to agree

to wait until after PacifiCorp filed its opening testimony to obtain the information requested because CREA needs to begin developing its own position as to PacifiCorp's avoided costs at this time. PacifiCorp never asked for clarification or any limitation on any individual data requests. Instead, PacifiCorp provided a long list of objections at the close of business on the due date for the responses, September 23, 2016. *See Attachment 1.*

Subsequently, counsel for CREA attempted to better understand PacifiCorp's position via electronic mail messages, and again offered to meet and confer with regard to the scope or meaning of any of the individual data requests. However, counsel for PacifiCorp essentially confirmed that PacifiCorp does not believe that it must accept or process any discovery requests until after the filing of PacifiCorp's opening testimony on October 14, 2016. The electronic mail messages between the parties are provided as Attachment 2 to this submission.

Because the parties are unable to resolve this discovery dispute and a motion to compel would further delay access to the avoided cost information, CREA now seeks informal resolution by ALJ Arlow.

III. ARGUMENT

As noted above, this proceeding is now a formal contested case proceeding to set the avoided costs, and the procedural order therefore states the Commission will "use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001." *See Prehearing Conference Memorandum*, at Attachment (Sept. 8, 2016). The ruling further provides:

"You have the right to respond to *all issues identified* and present evidence and witnesses on those issues. See OAR 860-001-0450 through OAR 860-001-0490. *You may obtain discovery from other parties through depositions, subpoenas, and data requests.* See ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540."

Id. (emphasis added). There is no statement in the procedural order or the referenced rules or statutes placing any restrictions on when discovery may commence.

Under the applicable rules, “[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.” ORCP 36(B); *see also* OAR 860-001-0540(1) (stating any party may submit data requests to any other party, subject to the discovery rules in the ORCP). In fact, the Commission expects parties to err “on the side of producing too much information . . . rather than too little.” *In re Portland General Electric Co.*, Order No. 09-046 at 8 (Feb. 5, 2009).

With regard to the dispute at hand, the information and material requested by CREA is subject to discovery at this time because it is directly relevant to PacifiCorp’s avoided costs and obviously likely to lead to discovery of admissible evidence. The purpose of this proceeding is to set PacifiCorp’s avoided costs. The Commission expressly stated this contested case proceeding “shall 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.” *See* Order No. 16-307. All of the information requested by CREA relates to issues raised previously in the non-contested case in docket UM 1729 or PacifiCorp’s subsequent compliance filing that emerged from that non-contested case. The information requested regards three main topics: (1) the recent RFP for renewable resources which PacifiCorp itself proposed to form the basis for its avoided costs just a few months ago and much of which was already shared with the Commissioners in an *ex parte* meeting on July 26, 2016 (data requests 1.1 through 1.7); (2) the basis for assuming that a Wyoming wind farm could be the proxy resource as proposed by

PacifiCorp and approved by the OPUC in PacifiCorp's compliance filing avoided costs which are currently in effect and will likely remain in effect unless different rates are adopted in this case (data requests 1.8 and 1.9); and (3) information related to PacifiCorp's renewable resource sufficiency position and inconsistent statements regarding the impacts of Senate Bill 1547 on its physical compliance needs (data requests 1.10 and 1.11). All of this information regards highly relevant topics.

The crux of PacifiCorp's objection is an assertion that CREA has no right to discovery prior to the time that PacifiCorp files its testimony in this docket. But there is no basis for such a restriction in any rule or order applicable to this case. Such a restriction compromises CREA's ability to plan its own case and frustrates CREA's ability to engage in more than a single round of discovery, which is always necessary in order to uncover additional information in follow-up questions. Furthermore, as a party to this proceeding, CREA has a statutory right to conduct discovery, including by written interrogatories of other parties, which right is embodied in the Commission's rules entitling CREA to lodge data requests. *See* ORS 756.538(2) ("any party to the proceeding may take testimony of any person by . . . written interrogatories"); OAR 860-001-0540(1) (data requests are written interrogatories or requests for production of documents).

In fact, immediate discovery is warranted because this proceeding is moving forward on an expedited basis, with CREA's testimony due approximately one month after PacifiCorp's testimony. PacifiCorp filed its original avoided cost update on March 1, 2016, and CREA has not had the opportunity to conduct discovery on PacifiCorp's filings. Given that PacifiCorp frequently objects to data requests and rarely provides complete answers, it is likely that the only way CREA can complete discovery in time to submit its own testimony is if PacifiCorp is

required to promptly and completely respond to all discovery requests, including those at issue in this submission.

Finally, PacifiCorp's position erects procedural obstacles that frustrate qualifying facilities' right to sell their output at PacifiCorp's full avoided costs. Avoided costs are the incremental costs of PacifiCorp's next avoidable generation resources. 18 C.F.R. § 292.101(b)(6). That topic obviously opens the door to a very wide range of potentially relevant information – almost all of which is exclusively within PacifiCorp's possession. Under 18 C.F.R. § 292.302(e)(2) and OAR 860-029-0080(6), PacifiCorp has the burden of coming forward with justification for its proposed avoided costs. However, it is well established that utilities, including PacifiCorp, are reluctant to purchase from independent QF generators and have no incentive to cooperate with such QFs or to pay the full avoided costs for QF output. *See FERC v. Mississippi*, 456 U.S. 742, 750 (1982). It would thwart the intent of federal and state law to allow PacifiCorp to unilaterally limit the scope of a proceeding to set its own avoided costs, as it apparently proposes to do here. Without full and complete discovery, the other parties and the Commission itself will be deprived of the ability to meaningfully vet PacifiCorp's avoided costs. Therefore, PacifiCorp must immediately produce the requested information in order to allow parties other than PacifiCorp to develop their own position on PacifiCorp's avoided costs.

IV. CONCLUSION

CREA requests that the ALJ direct PacifiCorp to provide complete responses to CREA's first set of data requests in an expedited timeframe within three days of the ALJ's resolution of this dispute.

RESPECTFULLY SUBMITTED this 4th day of October, 2016.

RICHARDSON ADAMS, PLLC

/s/ Gregory M. Adams

Gregory M. Adams (OSB No. 101779)
Of Attorneys for the Community Renewable
Energy Association

Attachment 2

Correspondence Prior to Informal Conference

Irion Sanger

From: Irion Sanger <irion@sanger-law.com>
Sent: Thursday, October 06, 2016 9:18 AM
To: Apperson, Erin; Greg Adams; puc.hearings@state.or.us; allan.arlow@state.or.us
Cc: 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 Request for Informal Resolution of Discovery Dispute

Judge Arlow

The Renewable Energy Coalition supports the Community Renewable Energy Association's request that discovery responses be provided. The Coalition has requested copies of PacifiCorp's responses to CREA's data requests and plans to use the information to prepare its testimony and legal briefing in this case.

In addition to the reasons raised by CREA, the requested RFP information is relevant to the issues in this proceeding. The scope of the proceeding includes "an expedited contested case proceeding shall 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." PacifiCorp, the Coalition and CREA all raised issues regarding the reasonableness of PacifiCorp's avoided cost rates, including the impact of the RFPs on PacifiCorp's rates. The Coalition plans to review the RFP information and potentially make arguments that it should be used when deciding what the correct resource sufficiency/deficiency demarcation is and the specific components of the avoided cost rates.

CREA's request is also not limited to only RFP information. CREA has asked for Wyoming wind data that is used to set the currently effective rates and information related to PacifiCorp's renewable sufficiency period from the Renewable Implementation Plan case and PacifiCorp's internally inconsistent statements on resource sufficiency.

The Coalition strongly disagrees with PacifiCorp's claim that it can withhold confidential material. PacifiCorp's response argues that because the CREA represents entities that could be competitors, the CREA should not be provided information that might undermine the Company's request for proposals process. The Coalition, like CREA, is made up of small renewable energy generations that PacifiCorp considers competitors. PacifiCorp's argument is misguided. The Commission has already established a process to address PacifiCorp's concerns, and that process does not permit PacifiCorp to withhold commercially sensitive information. In fact, a standard protective order is already in place in this proceeding and is protecting PacifiCorp's information. That protective order requires PacifiCorp to provide the information the Coalition is seeking, requires the Coalition to obtain written permission from PacifiCorp before using or disclosing that information for any purpose other than participating in this proceeding, and provides PacifiCorp an opportunity to object to consultants who wish to review the material.

If PacifiCorp believes the standard protective order does not provide the Company with sufficient protection, it should request a modified protective order instead of withholding relevant information. PacifiCorp has requested modified protective orders in numerous proceedings. Requesting a modified protective order would allow PacifiCorp to object to specific individuals who want to gain access to PacifiCorp's protected information.

PacifiCorp's response points to the Commission's ruling in UE 307, where certain information was not provided to an expert witness, and inaccurately suggests that the Commission declined to provide the confidential bid material to Noble Solutions. PacifiCorp provided the material and made it available to counsel for Noble Solutions under the modified protective order, but withheld its availability to Noble Solutions' consultant Kevin Higgins, on the basis that he represents market participants in renewable energy certificate sales. Without agreeing that Mr. Higgins should not have

been provided the confidential material, the same treatment here would dictate that PacifiCorp use the modified protective order for similar information and provide it to CREA's and the Coalition's counsel and any consultants who meet the criteria of the protective order.

PacifiCorp's past modified protective orders did not prevent lawyers and their staff from reviewing confidential information. I am not aware of any examples of the Commission imposing a blanket prohibition on lawyers. To the contrary, in PacifiCorp's request for proposal proceeding in UM 1368, organizations representing competitors were allowed access to PacifiCorp's confidential RFP information. PacifiCorp's argument that its commercially sensitive information is not protected by the existing Commission policy seems to suggest that lawyers or witnesses will violate the protective order. The Coalition notes the offensive implication and requests that you direct PacifiCorp to follow its existing policy regarding protective orders instead of permitting the Company to use such a baseless ad-hoc justification to withhold relevant information.

Irion Sanger

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From: "Apperson, Erin" <Erin.Apperson@pacificorp.com>

Date: Wednesday, October 5, 2016 at 5:48 PM

To: Greg Adams <Greg@richardsonadams.com>, "puc.hearings@state.or.us" <puc.hearings@state.or.us>, "allan.arlow@state.or.us" <allan.arlow@state.or.us>

Cc: Oregon Dockets <OregonDockets@PacifiCorp.com>, "dockets@renewablenw.org" <dockets@renewablenw.org>, "brittany.andrus@state.or.us" <brittany.andrus@state.or.us>, "stephanie.andrus@state.or.us" <stephanie.andrus@state.or.us>, "jeff@oseia.org" <jeff@oseia.org>, "Dalley, Bryce" <Bryce.Dalley@pacificorp.com>, Dina Dubson Kelley <dina@renewablenw.org>, "jravenesanmarcos@yahoo.com" <jravenesanmarcos@yahoo.com>, "erica@oseia.org" <erica@oseia.org>, Irion Sanger <irion@sanger-law.com>, "brian.skeahan@yahoo.com" <brian.skeahan@yahoo.com>, "silvia@renewablenw.org" <silvia@renewablenw.org>, Sidney Villanueva <sidney@sanger-law.com>

Subject: RE: UM 1794 CREA's Request for Informal Resolution of Discovery Dispute

Judge Arlow,

PacifiCorp thanks the Commission for scheduling the informal conference to resolve the discovery dispute between CREA and PacifiCorp in this proceeding. In its request for a conference, CREA included what essentially amounts to a motion to compel. PacifiCorp responds to some of CREA's arguments here, and appreciates your consideration of these issues at tomorrow's conference.

PacifiCorp reached out to CREA on September 19 to discuss PacifiCorp's objections to the discovery set and CREA disagreed with PacifiCorp's position. After CREA received PacifiCorp's objections, CREA reached out for

clarification. PacifiCorp reiterated its position and offered to hold a call to discuss the responses. CREA declined this offer stating that such a call would not be productive from CREA's perspective.

CREA unreasonably seeks to compel PacifiCorp to produce a wide range of information from its Requests for Proposals (RFPs), including all bids, workpapers, and documents from management's procurement decisions. In CREA's Request for Informal Resolution of Discovery Dispute (Request), CREA highlighted that Order No. 16-307 directed PacifiCorp to file new avoided cost prices based on cost and performance data from the 2015 IRP, *not the RFP bids*. CREA admits that the currently-effective prices are not based on information from the RFP bids, but still attempts to inappropriately use this proceeding to gain broad information from the RFP process.

CREA does not make any compelling arguments that the RFP bid information is relevant. CREA attempts to tie the RFP information to this proceeding by stating that CREA was unable to compel PacifiCorp to produce this information in UM 1729. Additionally, CREA claims that PacifiCorp's refusal to produce this irrelevant information is a delay tactic. The detailed information from the RFP bids is simply not relevant to PacifiCorp's currently-effective avoided cost prices. PacifiCorp has not yet made its initial filing, so CREA cannot reasonably argue that the RFP bid information will become relevant in this proceeding.

Notwithstanding that the RFP bid information is not relevant to this proceeding, CREA represents entities that could be competitors in potential future RFPs. Disclosing this information to CREA would undermine the competitive nature of these RFPs. In PacifiCorp's recent Oregon transition adjustment mechanism proceeding, the Commission did not allow an expert witness on behalf of Noble Americas Energy Solutions to access the confidential RFP materials in part because the expert witness represents entities that could be either competitors for the future purchase of RECs or potential future REC sellers.

Thank you,

Erin Apperson
Attorney, Pacific Power
PacifiCorp
825 NE Multnomah St., Suite 1800
Portland, OR 97232
| 503-813-6642 office | 503-964-3542 cell
Erin.Apperson@pacificcorp.com

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From: Greg Adams [<mailto:Greg@richardsonadams.com>]
Sent: Tuesday, October 04, 2016 4:04 PM
To: puc.hearings@state.or.us; allan.arlow@state.or.us
Cc: Oregon Dockets; dockets@renewablenw.org; Greg Adams; 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; irion@sanger-law.com; brian.skeahan@yahoo.com; silvia@renewablenw.org; sidney@sanger-law.com
Subject: [INTERNET] UM 1794 CREA's Request for Informal Resolution of Discovery Dispute

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.

Judge Arlow,

Please see the attached request for informal resolution of a discovery dispute between CREA and PacifiCorp.

I have conferred with PacifiCorp, and both parties are available for a telephone conference any time Thursday and on Friday between 10:00 until 1:00 Pacific time.

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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Attachment 3

PacifiCorp Motion for Clarification or Certification



825 NE Multnomah, Suite 2000
Portland, Oregon 97232

October 12, 2016

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-1166

Attn: Filing Center

RE: UM 1794—PacifiCorp's Motion for Clarification, or Alternatively, Certification

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket its Motion for Clarification.

If you have questions about this filing, please contact Natasha Siores at (503) 813-6583.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bryce Dalley", with a long horizontal flourish extending to the right.

R. Bryce Dalley
Vice President, Regulation

Enclosure

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of PacifiCorp's Motion for Clarification, or Alternatively, Certification on the parties listed below via electronic mail and/or or overnight delivery in compliance with OAR 860-001-0180.

Service List UM 1794

CREA UM 1794	
GREGORY M. ADAMS (C) RICHARDSON ADAMS, PLLC PO BOX 7218 BOISE ID 83702 greg@richardsonadams.com	BRIAN SKEAHAN CREA PMB 409 18160 COTTONWOOD RD SUNRIVER OR 97707 brian.skeahan@yahoo.com
OSEIA	
JEFF BISSONNETTE OREGON SOLAR ENERGY INDUSTRIES ASSOCIATION PO BOX 14927 PORTLAND OR 97293-0927 jeff@oseia.org	ERICA NIST-LUND OSEIA erica@oseia.org
PACIFICORP UM 1794	
PACIFICORP, DBA PACIFIC POWER 825 NE MULTNOMAH ST, STE 2000 PORTLAND OR 97232 oregondockets@pacificorp.com	R. BRYCE DALLEY PACIFIC POWER 825 NE MULTNOMAH ST., STE 2000 PORTLAND OR 97232 bryce.dalley@pacificorp.com
ERIN APPERSON PACIFIC POWER 825 NE MULTNOMAH STE 800 PORTLAND OR 97232 erin.apperson@pacificorp.com	
REC	
JOHN LOWE RENEWABLE ENERGY COALITION 12050 SW TREMONT ST PORTLAND OR 97225-5430 jravenesanmarcos@yahoo.com	IRION A SANGER (C) SANGER LAW PC 1117 SE 53RD AVE PORTLAND OR 97215 irion@sanger-law.com
SIDNEY VILLANUEVA (C) SANGER LAW, PC 1117 SE 53RD AVE PORTLAND OR 97215 sidney@sanger-law.com	

RENEWABLE NW	
RENEWABLE NORTHWEST 421 SW 6TH AVE., STE. 1125 PORTLAND OR 97204 dockets@renewablenw.org	DINA DUBSON KELLEY (C) RENEWABLE NORTHWEST 421 SW 6TH AVE STE 1125 PORTLAND OR 97204 dina@renewablenw.org
SILVIA TANNER (C) RENEWABLE NORTHWEST 421 SW 6TH AVE, STE 1125 PORTLAND OR 97204 silvia@renewablenw.org	
STAFF UM 1794	
BRITTANY ANDRUS (C) PUBLIC UTILITY COMMISSION OF OREGON PO BOX 1088 SALEM OR 97308-1088 brittany.andrus@state.or.us	STEPHANIE S ANDRUS (C) PUC STAFF--DEPARTMENT OF JUSTICE BUSINESS ACTIVITIES SECTION 1162 COURT ST NE SALEM OR 97301-4096 stephanie.andrus@state.or.us

Dated this 12th day of October, 2016.

Lauren Haney
Coordinator, Regulatory Operations

**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
MOTION FOR CLARIFICATION
OR, ALTERNATIVELY,
CERTIFICATION

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) respectfully requests clarification that the October 6, 2016 discovery conference held under OAR 860-001-0500(6) did not result in a ruling compelling PacifiCorp to produce highly confidential, commercially sensitive bid information from the Company’s requests for proposals (RFPs). In the alternative, if the Administrative Law Judge’s (ALJ) statements at the October 6 informal discovery conference constituted a ruling, then PacifiCorp respectfully requests certification of that ruling to the Public Utility Commission of Oregon (Commission).

As detailed below, clarification that the ALJ did not order PacifiCorp to disclose highly confidential, commercially sensitive information from the RFP bids at the October 6 conference is appropriate because the informal discovery dispute process outlined in OAR 860-001-0500(6) is intended to allow the parties to informally mediate discovery disputes before an ALJ without the need for motions to compel or written arguments. The process is not intended to replace a motion to compel or act as “oral argument” on a discovery dispute, and therefore should not result in a ruling by the ALJ.

In this case, the Community Renewable Energy Association (CREA) undermined the discovery dispute resolution process by invoking informal resolution under

OAR 860-001-0500(6) while effectively triggering OAR 860-001-0500(7) with its written filing. CREA's tactics conflated two distinct procedural mechanisms for resolving discovery disputes and created procedural confusion thereby hindering a prompt resolution of the underlying dispute.

Alternatively, if the ALJ's statements at the October 6 discovery conference are considered to be a binding ruling, certification is appropriate because the ruling will prejudice PacifiCorp by requiring it to disclose highly confidential, commercially sensitive RFP bids, which are unrelated to setting the Company's avoided cost prices. Disclosure of this information will shift the focus away from the inputs to the Company's avoided cost prices; instead, parties will improperly use this investigation to challenge the process and results of the RFPs, which is outside the scope of this proceeding.

Additionally, good cause exists to certify the ALJ's October 6 ruling because CREA misused the discovery dispute process to unfairly disadvantage PacifiCorp and prevent it from fully presenting its arguments to the ALJ.

I. STATEMENT OF FACTS

This investigation was opened at the conclusion of a lengthy process to update the Company's avoided cost prices in UM 1729(1). In Order No. 16-307, the 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).¹ This docket, however, is not an opportunity for CREA and others to relitigate and retroactively challenge the prices established in UM 1729(1).

¹ *In the Matter of PacifiCorp, d/b/a Pacific Power, Application to Update Schedule 37 Qualifying Facility Information*, Docket No. UM 1729(1), Order No. 16-307 (Aug. 18, 2016).

In this new proceeding, CREA, an organization that represents potential bidders in future RFPs, seeks to compel PacifiCorp to provide detailed bid information from the Company's RFPs, among other requests. The Company has not yet made its initial filing in this proceeding, and neither the Company nor the Commission relied on the RFP bid information to set PacifiCorp's avoided cost prices in UM 1729(1).

On March 1, 2016, PacifiCorp filed its updated avoided cost prices using inputs from the Company's 2015 Integrated Resource Plan (IRP) under OAR 860-029-0080. In Order No. 16-117, the Commission declined to approve the Company's and directed parties to work together to propose a non-contested case process to update the Company's avoided cost prices in light of the potential impact of Senate Bill (SB) 1547. After multiple discussions, parties were unable to reach agreement.

On June 21, 2016, PacifiCorp filed a supplemental update to its standard avoided cost prices with inputs from the Company's 2015 IRP Update—not the RFP bids. In that filing, the Company reasoned that use of cost and performance inputs from the 2015 IRP Update was appropriate as part of a compromise to use 2018 as the renewable resource deficiency date. The Company argued that it would be unfair to customers to accelerate the deficiency date without updating cost and performance. The RFP bids were *not* used as evidence in that proceeding; PacifiCorp merely made an anecdotal comment referencing the preliminary results from the resource RFP as consistent with data in the 2015 IRP Update for cost and performance.² The prices from the RFP bids were never referenced or used as support for the Company's avoided cost prices. As the Company explained, the issuance of the RFPs did not mean that PacifiCorp was resource deficient; the RFPs were not issued to satisfy a specifically identified resource

² See *In the Matter of PacifiCorp, d/b/a Pacific Power, Application to Update Schedule 37 QF Information*, Docket No. UM 1729(1), Supplemental Application at 4 (June 21, 2016).

need. Rather, the RFPs were issued to test the market and evaluate its RPS compliance alternatives, including potential near-term, time-sensitive opportunities to allow the best opportunity for customers to take full advantage of the federal tax credits.³

CREA unsuccessfully attempted to access the confidential RFP bids in UM 1729(1). PacifiCorp did not produce this information because UM 1729(1) was not a contested case proceeding and discovery was not permitted. Although CREA contends that the confidential bids were relevant in UM 1729(1), no such finding or determination was ever made.

UM 1729(1) concluded with the Company's August 22 compliance filing, which updated its standard avoided cost prices based on renewable and non-renewable deficiency periods beginning in 2028, and cost and performance data from its 2015 IRP, *not the RFP bids*.

On September 23, 2016, CREA issued its first set of data requests to PacifiCorp seeking commercially sensitive information from the confidential RFP bids. CREA seeks to require PacifiCorp to provide a broad range of information from its RFPs, including all bids and supporting work papers developing the weighted average costs and capacity factors (Data Request 1.1). CREA seeks disclosure of the "lowest cost bids," the number of bids for a physical wind resource, whether each bid would use third-party transmission, assumed Bonneville Power Administration transmission costs, the complete list of the final short list of bids, and any changes made by the bidders (CREA Data Requests 1.2, 1.3, 1.4, and 1.7). CREA seeks a complete list of the selected bids for the renewable energy credit purchases (CREA Data Request 1.5). CREA also seeks all documents provided to executive officers or members of the Board of Directors as part of the approval process for the RFP procurement decisions (Data

³ *Id* at 3.

Request 1.6). CREA seeks an explanation of why PacifiCorp did not accept bids from physical resources located in Wyoming in the RFP (Data Request 1.8).

PacifiCorp and CREA were unable to resolve this discovery dispute informally. On September 19, 2016, PacifiCorp contacted CREA to discuss the Company's concerns with the data requests, and CREA disagreed with the Company's position. After CREA received the Company's objections, CREA reached out to the Company for clarification. The Company reiterated its position and offered to hold a call to discuss the responses. CREA declined the Company's offer, stating CREA did not believe such a call would be productive.

CREA attempted to resolve this discovery dispute with the ALJ by conflating the processes outlined in OAR 860-001-0500(6) and OAR 860-001-0500(7). On October 4, 2016, CREA contacted the ALJ to request an informal resolution of this discovery dispute, citing OAR 860-001-0500(6), but also submitted a lengthy legal argument in pleading form. CREA characterized its pleading as a Request for Informal Resolution of Discovery Dispute.

PacifiCorp had agreed to an expedited conference, but was unaware CREA would submit what amounted to a motion to compel. On October 5, 2016, PacifiCorp sent a limited written response to CREA's request, and on October 6, 2016, the Renewable Energy Coalition (REC) sent written arguments in support of CREA's position. CREA's request and the email communications between parties are included as Attachment A.

On October 6, 2016, the ALJ held a telephone conference to discuss the discovery dispute between CREA and PacifiCorp. Representatives from CREA, PacifiCorp, REC, and Commission Staff participated in the telephone conference. At that conference, the ALJ stated he had reviewed parties' written materials and allowed each party to supplement their positions. At the conclusion of the conference, the ALJ concluded against PacifiCorp's repeated objections

that the confidential RFP bid information was discoverable. The ALJ directed PacifiCorp to work with parties to draft a highly confidential protective order to facilitate the disclosure of certain highly confidential, commercially sensitive bid information from the Company's RFPs.⁴ The ALJ did not issue a written ruling, and the conference was not recorded.

II. PACIFICORP'S REQUEST FOR CLARIFICATION

PacifiCorp seeks clarification that, in accordance with the informal, non-binding process outlined in OAR 860-001-0500(6), the ALJ did not issue a ruling at the October 6 conference compelling PacifiCorp to disclose certain highly confidential, commercial sensitive information from the RFP bids.

A. Legal Standard

The non-binding dispute resolution process under OAR 860-001-0500(6) states: "If parties are unable to resolve a dispute informally, then any of the parties involved in the dispute may ask the ALJ to conduct a conference to *facilitate the resolution* of discovery disputes" (emphasis added). At the conference, the ALJ serves as a mediator to facilitate discussion between parties to resolve the dispute without motions, if possible.⁵ The ALJ does not issue a ruling or otherwise direct parties to respond to discovery,⁶ and the discovery conference is not binding on parties.⁷

Before the conference, the requesting party—in this case CREA—is required to submit a short summary "identify[ing] the specific discovery sought and describ[ing] the efforts to resolve

⁴ CREA also seeks all filings and discovery responses made by PacifiCorp in ongoing docket UM 1790 (CREA Data Request 1.11). At the October 6 discovery conference, parties focused on the disclosure of the highly confidential, commercially sensitive RFP bid information; therefore, PacifiCorp understands that CREA Data Request 1.11 was not within the scope of the ALJ's statements at that conference.

⁵ See OAR 860-001-0500(6).

⁶ See *id.*

⁷ See *id.*

the dispute informally.”⁸ The dispute resolution process does not provide for lengthy written arguments before the conference, and the conference is not intended to be an oral argument. Rather, this is an expedited process to *avoid* lengthy written arguments, if possible.

A party may use a separate procedure to seek formal resolution of a discovery dispute by filing a motion to compel under OAR 860-001-0500(7), which can be used in lieu of the informal discovery conference, or alternatively, if parties fail to reach agreement at the conference. When a party files a motion to compel, parties have time to respond and reply to the motion in writing.⁹ The two discovery dispute processes are not intended to be invoked simultaneously or otherwise conflated.

B. Argument

PacifiCorp seeks clarification that the ALJ did not order PacifiCorp to disclose highly confidential, commercially sensitive information from the RFP bids at the October 6 conference when parties did not agree that this information is within the scope of this proceeding. In this case, the dispute resolution process was undermined by CREA’s attempts to use parts of both OAR 860-001-0500(6) and OAR 860-001-0500(7) to suit its needs.

CREA misused the discovery rules by asking the ALJ to issue a ruling not permitted by OAR 860-001-0500(6), submitting what effectively constituted a motion to compel, and denying PacifiCorp the opportunity to respond to its written pleading in the timelines provided for in the Commission’s rules. Rather than provide a summary of the discovery dispute as required by OAR 860-001-0500(6), CREA submitted a lengthy legal argument. In its request, CREA asked the ALJ to “compel PacifiCorp to provide complete responses” to its data requests. CREA asked the ALJ to hold a discovery conference within days of submitting its “motion.” CREA

⁸ *See id.*

⁹ Under 860-001-0420(4), parties have 15 days to respond to the motion, and a reply is permitted under OAR 860-001-0500(7).

undermined this process by confusing the formal and informal discovery dispute processes and asking the ALJ to take action not permitted by the rules. This is not the process outlined in OAR 860-001-0500(6)¹⁰ and deprived PacifiCorp of the basic procedural protections afforded by the motion to compel process in OAR 860-001-0500(7).

III. PACIFICORP'S REQUEST FOR CERTIFICATION

In the alternative, under OAR 860-001-0110, PacifiCorp moves for certification of the ALJ's purported ruling at the October 6 discovery conference. As detailed below, certification is appropriate because the October 6 ruling will prejudice PacifiCorp and good cause exists for certification.

A. Legal Standard

OAR 860-001-0110(1) specifies that any party may request that the ALJ certify its ruling for the Commission's consideration within 15 days. 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, certification is appropriate under either subpart (a) or (c).

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

¹⁰ In light of parties' recent practice of conflating the two discovery dispute processes outlined in OAR 860-001-0500(6) and (7), it would be helpful for the Commission to clarify the process contemplated in OAR 860-001-0500(6) is a non-binding discovery dispute process that should not be invoked at the same time that parties seek formal resolution through OAR 860-001-0500(7).

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).

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

B. Argument

If the ALJ's statements at the October 6 conference are considered a ruling, the ALJ should certify this ruling to the Commission because it will unduly prejudice PacifiCorp and good cause exists for certification.

PacifiCorp will be prejudiced by the disclosure of highly confidential, commercial sensitive RFP bids, which are outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. As discussed above, the RFP bids were not and are not used to set the Company's avoided cost prices. Nor were they considered by the Commission when it approved PacifiCorp's current avoided cost prices. If the Company is required to disclose this highly confidential, commercially sensitive information, this proceeding will become a forum for parties to attack the process and results of the RFPs. Furthermore, compelling PacifiCorp to disclose confidential bids 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. This expedited, contested case proceeding is to set the Company's avoided cost prices, not an investigation into the process and results of the Company's RFPs.

The highly confidential, commercially sensitive information from the Company's RFPs, including all bids, supporting work papers, and documents from management's procurement decisions, is irrelevant to this investigation into the PacifiCorp's avoided cost prices. CREA

¹² OAR 860-001-0450.

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).

claims that PacifiCorp's refusal to produce this irrelevant information is a delay tactic; however, PacifiCorp has not even made its initial filing so CREA cannot reasonably argue that PacifiCorp will rely on the RFP bids in its filing.

CREA attempts to tie the RFPs to this investigation by complaining that it was unable to compel PacifiCorp to produce the information in UM 1729(1), but ignores that the RFP bids were not relied on by the Company or the Commission in that proceeding. In the June 21 filing in UM 1729(1), the Company sought to update the stale cost and performance data as part of a compromise to use a 2018 renewable resource deficiency date. The Company did not rely on the RFP bid information as evidence, and the reference to the RFP bid information was not necessary to support the use of cost and performance inputs from the 2015 IRP Update. PacifiCorp anecdotally observed that the cost and performance data from the Company's 2015 IRP Update was consistent with the preliminary results from the resource RFP.¹⁴

Neither did the Company rely on the commercially sensitive RFP bids in its August 22 compliance filing in UM 1729(1). In its "motion," CREA even highlighted that Order No. 16-307 directed PacifiCorp to file new avoided cost prices based on cost and performance data from the 2015 IRP, *not the RFP bids*. CREA admits that the currently effective prices are not based on information from the RFP bids, but still attempts to inappropriately use this proceeding to gain broad information from the RFP process.

Additionally, PacifiCorp should not be required to produce highly confidential, commercially sensitive RFP bid information to CREA, which represents entities that could be

¹⁴ Supplemental Application at 4.

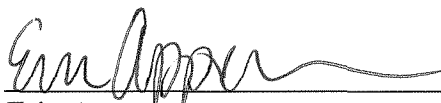
competitors in future RFPs.¹⁵ Disclosing this information to such entities would undermine the competitive nature of future RFPs, particularly to expert consultants or other individuals that would be involved in future RFP processes.

Good cause exists to certify the ALJ's ruling because PacifiCorp was unfairly disadvantaged by CREA's abuse of the informal discovery process. As discussed previously, CREA ignored the requirements in OAR 860-001-0500(6). Rather than submit a summary of discovery sought, CREA basically submitted a motion to compel just two days before the requested conference. Had CREA correctly filed the motion to compel at the conclusion of the discovery conference, PacifiCorp would have had 15 days to respond. PacifiCorp did not have adequate time to respond to CREA's motion and prepare for the discovery conference. CREA's misuse of the rules prevented PacifiCorp from fully presenting its arguments to the ALJ.

IV. CONCLUSION

For the foregoing reasons, PacifiCorp respectfully requests clarification that the ALJ did not issue a binding ruling at the October 6 discovery conference. In the alternative, if the ALJ's statements are considered a ruling, PacifiCorp respectfully requests certification of that ruling.

Respectfully submitted this 12th day of October, 2016.

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

¹⁵ In PacifiCorp's recent Oregon transition adjustment mechanism proceeding, the Commission did not allow an expert witness on behalf of Noble Americas Energy Solutions to access the confidential RFP materials in part because the expert witness represents entities that could be either competitors for the future purchase of RECs or potential future REC sellers. *In the Matter of PacifiCorp d/b/a Pacific Power 2017 Transition Adjustment Mechanism*, Docket No. UE 307, Ruling at 1 (Aug. 25, 2016).

Attachment 4

CREA's Response and Motion to Compel

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP, dba PACIFIC POWER,)	Docket No. UM 1794
)	
Investigation into Schedule 37 - Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less)	COMMUNITY RENEWABLE ENERGY ASSOCIATION'S RESPONSE TO PACIFICORP'S REQUEST FOR ALJ CERTIFICATION
)	
)	
)	

I. INTRODUCTION

The Community Renewable Energy Association (“CREA”) respectfully files this response in opposition to PacifiCorp’s request to clarify or certify Administrative Law Judge (“ALJ”) Allan Arlow’s ruling requiring PacifiCorp to provide complete responses to CREA’s first set of discovery requests under OAR 860-001-0500(6). The background and basis supporting ALJ Arlow’s oral ruling directing PacifiCorp to provide complete discovery responses is set forth in detail in CREA’s summary of the discovery dispute, which PacifiCorp filed as an attachment to its motion for clarification/certification. CREA stands by its substantive arguments and ALJ Arlow’s directive in favor of those arguments without repeating them here, and instead responds to PacifiCorp’s new motion for clarification/certification. For the reasons explained below, ALJ Arlow should deny PacifiCorp’s request for certification and again direct PacifiCorp to provide complete discovery responses to prevent further delay of this expedited proceeding before the Oregon Public Utility Commission (“OPUC”).

Additionally, in the alternative, if ALJ Arlow agrees that his prior directive at the discovery conference has no legal effect, CREA is concurrently filing an expedited motion to

compel discovery for the same reasons ALJ Arlow already directed PacifiCorp to provide discovery responses. ALJ Arlow could grant CREA's motion to compel, which would moot PacifiCorp's procedural arguments.

II. ARGUMENT

A. PacifiCorp's Objection to Providing Discovery Fails on the Merits.

On the merits of the discovery dispute, PacifiCorp offers nothing new that warrants reconsideration of ALJ Arlow's direction that PacifiCorp provide complete responses to CREA's first set of data requests. Although PacifiCorp asserts that its basic procedural rights were somehow violated, its arguments in its request for ALJ certification add nothing new to the arguments it previously presented at the discovery conference. ALJ Arlow should therefore again direct PacifiCorp to provide complete responses to all of the requests contained in CREA's first set of data requests.

As noted in CREA's prior submittal triggering the discovery conference, the data requests sought three categories of materials: (1) information regarding the 2016 Renewable Request for Proposals ("RFP") and internal documents supporting PacifiCorp's ultimate course of action in the RFP (data requests 1.1 through 1.7); (2) information regarding the assumptions and support for use of a Wyoming wind farm as the proxy resource, as exists in the currently effective avoided cost rates (data requests 1.8 and 1.9); and (3) information and documents related to PacifiCorp's need for renewable resources, including inconsistent statements made to the legislature and documents produced in the ongoing renewable implementation plan docket (data requests 1.10 and 1.11). PacifiCorp's motion for clarification/certification provides no argument whatsoever regarding the second and third categories of requests, and therefore

concedes that ALJ Arlow correctly directed complete responses to those requests.¹ PacifiCorp only actually presents argument disputing its obligation to provide information related to the RFP, but its sole argument lacks merit.

The requested RFP information was *placed in issue by PacifiCorp* in support of PacifiCorp's position. One of the most critical disputed issues in setting PacifiCorp's avoided costs in this proceeding and the precursor proceedings has been the proper cost assumptions for PacifiCorp's next avoidable wind facility. CREA and OPUC Staff have argued that the OPUC should require PacifiCorp to use the cost assumptions from its acknowledged 2015 Integrated Resource Plan ("IRP") for the purpose of setting avoided cost rates, but PacifiCorp has argued that the lower costs for a wind facility contained in its post-hoc, *unacknowledged* 2015 IRP Update are more reasonable. *See* Order No. 16-307 at App. A at 4-6. The OPUC has a well-established policy not to set avoided costs based upon an *unacknowledged* IRP Update. *See* Order No. 14-058 at 25-26. Thus, recognizing it had to somehow legitimize its *unacknowledged* 2015 IRP Update, PacifiCorp directly pointed to the alleged RFP results as a basis to corroborate the *unacknowledged* 2015 IRP Update's cost figures through its Supplemental Application in docket UM 1729 (cited in the data requests themselves), and then apparently presented those RFP results (or some summary of them) to the OPUC in an ex parte presentation of the RFP results on July 26, 2016. The RFP information requested is therefore inextricably intertwined with direct assertions PacifiCorp made to the OPUC in support of its wind proxy cost proposals from the *unacknowledged* 2015 IRP Update.

¹ Indeed, just yesterday, PacifiCorp provided supplemental responses to data requests 1.9 and 1.10, further conceding these topics are relevant and complete responses are also necessary to data requests 1.8 and 1.11.

PacifiCorp's recent filing of testimony in this docket only further supports the relevance of the RFP results that PacifiCorp has already presented to the OPUC. 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. See UM 1794 PAC/100, Dickman/4:9-15 (relying on its UM 1729 Supplemental Application, which was "explicitly linked to using updated cost and performance assumptions for the proxy renewable resource"); *id.* at 6:9-10 (alleging there have been "significant reductions in the cost of renewable resources since the 2015 IRP was prepared," and the 2015 IRP Update is more accurate). Although PacifiCorp does not again cite its alleged RFP results as a basis to support the *unacknowledged* 2015 IRP Update, it already alleged the RFP results support its position and apparently presented those results to the OPUC in an ex parte proceeding. Put simply, that bell cannot be un-rung by relabeling this docket UM 1794 instead of docket UM 1729.

The RFP information is relevant and potentially useful for multiple additional reasons aside from the reasons PacifiCorp itself already used it in a presentation to the Commissioners and its Supplemental Application in docket UM 1729. For example, CREA's data request 1.7 requests the cost assumptions for Bonneville Power Administration transmission used for purposes of evaluating RFP bids, which may enable CREA to develop its own proposal for the avoided cost rates with inclusion of an appropriate transmission cost adder to the avoided costs for an Oregon wind farm. And CREA's data request 1.6 requests all documents provided to PacifiCorp's executive officers and board of directors regarding its decision not to acquire a physical resource in the RFP, which obviously may provide insights into PacifiCorp's actual resource sufficiency position beyond the statements made in its IRP's and filings at the OPUC.

PacifiCorp provides no basis to withhold such documents or a privilege log listing the materials it claims to be privileged. Furthermore, the RFP information is potentially useful and relevant for the independent reason to test the truth of the allegations PacifiCorp made earlier in this proceeding. If PacifiCorp or its witnesses misled or withheld material facts in making assertions about the RFP bid results and current market conditions, that fact would be useful for impeachment of the credibility of PacifiCorp and its witnesses in this proceeding.

PacifiCorp's objection that the material is confidential is misplaced. It is well settled that "a party's assertion that information responsive to a discovery request is confidential may not be used to delay the discovery process." OAR 860-001-0500(8). Additionally, PacifiCorp's claims are undercut by the fact that it apparently already shared much of the information (or a summary of it) at an ex parte meeting with the Commissioners. Having done so, PacifiCorp cannot withhold the data underlying its assertions from parties here.

PacifiCorp suggests that counsel for CREA will disseminate the RFP information for use among businesses that CREA represents for the purpose of gaming the next RFP. This suggestion actually contradicts PacifiCorp's lead position in its recently filed testimony, which is that it will not hold another renewable RFP to acquire a renewable resource until at least 2028. While CREA does believe that PacifiCorp will wait more than a decade to acquire new renewable resources, the bid results in the now-closed RFP may not be highly sensitive because there would be no way to use them to PacifiCorp's disadvantage in another RFP. In any event, such concerns can be, and regularly are, addressed by the terms of a modified protective order. Indeed, ALJ Arlow appropriately directed PacifiCorp to work with the other parties and Staff to

develop the necessary protective order. The allegedly sensitive nature of the material is not a basis to deny discovery.

Therefore, ALJ Arlow should again reject PacifiCorp's discovery objections.

B. PacifiCorp's Procedural Arguments Are Misplaced and Should Be Rejected.

1. ALJ's Directive at the Discovery Conference Is Binding on PacifiCorp.

The crux of PacifiCorp's latest gambit to refuse to cooperate is that ALJ Arlow did not have authority to direct PacifiCorp to produce the requested materials during a conference to facilitate resolution of a discovery dispute. But this argument fails.

The OPUC's administrative rules grant the ALJ broad discretion to "[s]upervise and control discovery." OAR 860-001-0090(g). The ALJ has express authority to "conduct a conference to facilitate resolution of discovery disputes," OAR 860-001-0500(6), and to "[t]ake *any other action* consistent with the duties of an ALJ." OAR 860-001-0090(m) (emphasis added). Accordingly, ALJ Arlow acted well within his authority to reject PacifiCorp's baseless arguments and direct PacifiCorp to *promptly* provide complete discovery responses and develop any reasonably necessary protective orders to allow for such discovery, particularly in this proceeding which the OPUC directed would be conducted on an expedited basis.

Ignoring the plain language of the OPUC's rules, PacifiCorp writes new restrictions on the authority of the ALJ. PacifiCorp cites OAR 860-001-0500(6), and asserts: "The ALJ does not issue a ruling or otherwise direct parties to respond to discovery, and the discovery conference is not binding on parties." *PacifiCorp's Motion for Clarification/Certification* at 6 (footnotes omitted). But the rule includes no such restrictions. Instead, as noted above, the ALJ has broad discretion to supervise and control discovery.

PacifiCorp chose to participate in the discovery conference. It could have declined to participate and submitted a polite correspondence indicating that it did not believe it could respond on an expedited basis. But it did not. Instead, PacifiCorp elected to participate, argued its position, and lost. Now it must comply with the directive made by ALJ Arlow in that conference – just as CREA did when ALJ Grant sided with PacifiCorp in a discovery conference on the same subject matter during the non-contested case in docket UM 1729.

Apparently, PacifiCorp believes it must only comply with directives that are in written orders, and may ignore an ALJ’s resolution of a discovery dispute that occurs during an expedited discovery conference. However, the purpose of the right to request a discovery conference is to “facilitate *resolution*” of a discovery dispute – not to provide a proposed resolution PacifiCorp may choose to unilaterally ignore after the discovery conference. OAR 860-001-0500(6) (emphasis added). The obvious intent of the rule is to allow for expedited resolution of discovery disputes. Under PacifiCorp’s interpretation of the rules, the right to seek ALJ resolution through an expedited conference would be useless because it would actually result in additional delays. Instead of obtaining resolution of the dispute, the party would be forced – as CREA has been here in the alternative – to file a motion to compel discovery *after* the ALJ has already directly opined and resolved the dispute at issue.

2. There is no basis for ALJ Arlow to certify the ruling to the Commission.

PacifiCorp incorrectly asserts that, if ALJ Arlow’s directive is binding, certification to the Commission is warranted because the ruling may result “in substantial detriment to the public interest or undue prejudice to” PacifiCorp or because “good cause exists for certification.” OAR 860-001-0110(2). Neither requirement for certification is met.

PacifiCorp can hardly claim it is “prejudiced” by disclosure of highly confidential RFP bids when it already presented the information (or a summary of it) to the Commissioners and when PacifiCorp has made no effort to craft an appropriate modified protective order.² In fact, the equities here weigh sharply against PacifiCorp’s uncooperative behavior, particularly where certification will only further delay the proceedings and ensure that the existing procedural schedule will need to be modified for CREA, Staff and other intervenors to use the currently withheld materials in their own testimony.

PacifiCorp argues there is good cause for certification because its rights were impaired by CREA’s summary of the discovery dispute submitted with its request for a discovery conference.³ However, an ALJ could not promptly resolve a discovery dispute during a conference call without a clear summary of the disputed issues. CREA’s request itself was only eight pages long and concisely summarized the issues and CREA’s position. PacifiCorp cannot seriously claim any procedural harm because it knew CREA intended to request ALJ resolution days in advance, providing it ample time to assemble its responsive position. Furthermore, under the OPUC’s rules, PacifiCorp must provide its objections to data requests “in writing” at the time that its responses are due. OAR 860-001-540(1). Therefore, CREA’s submittal requesting resolution of the dispute was effectively a response to PacifiCorp’s objections set forth in its answers to the data requests at issue. That PacifiCorp failed to provide complete explanation of its objections at the time it refused to respond to the data requests is no basis to punish or impose further delays upon CREA.

² CREA is not aware of PacifiCorp reaching out to the other parties to propose, or even discuss, modified protective order language it would find acceptable.

³ PacifiCorp suggests that the CREA’s request for resolution of the discovery dispute was *filed* in the docket. It was not filed; instead, it was electronically submitted to ALJ Arlow and all parties to ensure that no ex parte contact occurred.

In any event, ALJ Arlow provided PacifiCorp with ample opportunity to respond on the merits of the discovery dispute prior to resolving the dispute. PacifiCorp responded to CREA's position both through an email to ALJ Arlow prior to the conference and through an opportunity to orally respond during the conference. The email submitted by PacifiCorp prior to the conference is attached to PacifiCorp's motion, and a cursory review of it reveals that PacifiCorp's email in fact makes virtually the same substantive arguments against discovery PacifiCorp now makes in its certification motion. The additional time has led to no new revelations in PacifiCorp's latest motion. PacifiCorp was therefore not prejudiced.

III. CONCLUSION

CREA requests that the ALJ deny PacifiCorp's request for clarification/certification and again direct PacifiCorp to comply with the rules of discovery by providing complete responses to CREA's first set of data requests. In the alternative, if ALJ Arlow's prior directive at the discovery conference has no legal effect, CREA is concurrently filing a motion to compel discovery for the same reasons ALJ Arlow already directed PacifiCorp to provide discovery responses, which the ALJ could grant to moot PacifiCorp's procedural arguments.

RESPECTFULLY SUBMITTED this 19th day of October, 2016.

RICHARDSON ADAMS, PLLC

/s/ Gregory M. Adams

Gregory M. Adams (OSB No. 101779)
Of Attorneys for the Community Renewable
Energy Association

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP, dba PACIFIC POWER,)	Docket No. UM 1794
)	
Investigation into Schedule 37 - Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less)	MOTION TO COMPEL DISCOVERY BY THE COMMUNITY RENEWABLE ENERGY ASSOCIATION
)	
)	EXPEDITED PROCESSING REQUESTED
)	

I. INTRODUCTION AND SUMMARY

The Community Renewable Energy Association (“CREA”) respectfully moves Administrative Law Judge (“ALJ”) Allan Arlow to issue a written ruling compelling PacifiCorp to provide complete responses to CREA’s first set of date requests under OAR 860-001-0500(7) in the above-captioned contested case proceeding before the Oregon Public Utility Commission (“Commission” or “OPUC”). In the non-contested case predecessor to this docket, the Commission ordered PacifiCorp to file new avoided costs with prices based on renewable and non-renewable deficiency periods beginning in 2028 based on the cost and performance data from its 2015 IRP, i.e. *not* the 2015 IRP Update. *See* Order No. 16-307. However, recognizing that other parties had no opportunity to vet all available data, the Commission further directed: “an expedited contested case proceeding *shall 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.*” *Id.* (emphasis added). Thus, the very purpose of this docket is an expedited vetting of all potentially relevant information related to PacifiCorp’s avoided costs.

Although CREA was denied discovery in the predecessor docket UM 1729 on the ground

that it was not a contested case, CREA promptly sought discovery into three relevant areas after ALJ Arlow issued the contested case notice in this docket: (1) information regarding the 2016 Renewable Request for Proposals (“RFP”) and internal documents supporting PacifiCorp’s ultimate course of action in the RFP (data requests 1.1 through 1.7); (2) information regarding the assumptions and support for use of a Wyoming wind farm as the proxy resource, as exists in the currently effective avoided cost rates (data requests 1.8 and 1.9); and (3) information and documents related to PacifiCorp’s need for renewable resources, including inconsistent statements made to the legislature and documents produced in the ongoing renewable implementation plan docket (data requests 1.10 and 1.11). PacifiCorp refused to provide any discovery, and CREA sought resolution of the discovery dispute before ALJ Arlow.

ALJ Arlow already correctly resolved this discovery dispute in CREA’s favor during the discovery conference held on October 6, 2016 under OAR 860-001-0500(6). As ALJ Arlow already determined, CREA’s first set of data requests were narrowly tailored to obtain information that is likely to lead to relevant evidence regarding PacifiCorp’s avoided costs, and PacifiCorp’s objections to providing complete responses lack merit. However, PacifiCorp has refused to comply with ALJ Arlow’s resolution of the dispute on the ground that it was not a written ruling in response to a motion to compel discovery. PacifiCorp also filed a motion for clarification or certification to the Commission of ALJ Arlow’s resolution of the discovery dispute at the discovery conference. CREA submits that ALJ Arlow’s prior directive has legal effect and cannot be ignored by PacifiCorp for the reasons set forth in CREA’s concurrently filed response to PacifiCorp’s motion for clarification or ALJ certification.

However, in the alternative, CREA files this expedited motion to compel discovery for

the same reasons ALJ Arlow already directed PacifiCorp to provide discovery responses. If ALJ Arlow agrees that his prior directive was a meaningless legal nullity, as PacifiCorp asserts, CREA respectfully requests that ALJ Arlow issue a written ruling granting this motion to compel to moot PacifiCorp's procedural arguments and allow CREA and other parties to move onto the substantive merits of this docket.

II. REQUEST FOR EXPEDITED TREATMENT

PacifiCorp's intentional delay tactics have seriously compromised CREA's ability to plan and develop its own testimony, which must be filed on November 18, 2016. While PacifiCorp's delays may ultimately require changes to the current procedural schedule, CREA respectfully requests expedited resolution of this dispute and shortened response times for PacifiCorp in order to make a good faith effort to complete this case on an expedited basis. CREA submits that no response is necessary at all since PacifiCorp has 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 of ALJ's resolution at that discovery conference. However, if ALJ Arlow is inclined to provide PacifiCorp an opportunity to again present the basis for its objections, CREA respectfully requests a shortened response time of two business days, and requests resolution without awaiting a reply from CREA.

Counsel for CREA certifies that the other parties to this docket were contacted regarding expedited treatment of processing on two business days via email sent yesterday. The Renewable Energy Coalition indicated it supports CREA's proposed response deadlines, but PacifiCorp opposes expedited treatment. No other party responded to CREA's inquiry.

III. CERTIFICATION OF ATTEMPT TO MEET AND CONFER

Counsel for CREA certifies that the parties have attempted to meet and confer. The emails between the parties prior to the October 6 discovery conference regarding this discovery dispute are contained in the Attachment to this filing, which is CREA's submittal requesting the discovery conference. The parties also participated in a discovery conference on October 6, 2016, where ALJ Arlow provided a resolution to the discovery dispute without a written ruling. Additionally, counsel for CREA again attempted to confer with PacifiCorp on October 18, 2016 via telephone, but PacifiCorp's counsel was unavailable. Given PacifiCorp's attempt to appeal ALJ Arlow's resolution already, it appears that PacifiCorp is not interested in further discussions.

IV. SUMMARY OF DISPUTE

CREA has attached its submittal requesting a discovery conference containing background and CREA's position that ALJ Arlow already determined to have merit, and incorporates the summary of this dispute set forth therein by reference. This section provides additional background on the discovery conference and events occurring since that conference.

ALJ Arlow held a discovery conference under OAR 860-001-0500(6) on October 6, 2016. PacifiCorp, Renewable Energy Coalition ("REC"), OPUC Staff, and CREA participated and presented their positions. ALJ Arlow agreed that CREA was entitled to responses to the first set of data requests and directed the parties to develop any necessary modified protective order to address confidentiality concerns with the RFP results.

However, PacifiCorp never contacted CREA to develop a modified protective order, and provided no additional responses regarding the RFP results or any other data requests for over a

week. Instead, on October 12, 2016, PacifiCorp filed its motion for clarification or ALJ certification challenging the ALJ Arlow's resolution of the dispute on procedural and substantive grounds. PacifiCorp filed its opening testimony on October 14, 2016 – essentially mooting its objection to providing discovery responses prior to the filing of its testimony. On October 18, 2016, without any prior notice or discussion, PacifiCorp provided supplemental responses to CREA data requests 1.9 and 1.10, mooting its objections and request for certification with regard to those requests. At the time of this filing, PacifiCorp has provided no substantive response to CREA data requests 1.1 through 1.8 and 1.11, all of which were included in the set to which ALJ Arlow directed PacifiCorp to respond.

V. ARGUMENT

CREA incorporates by reference the arguments contained in its attached request for informal dispute resolution that ALJ Arlow already determined to have merit. In addition to the arguments set forth therein, CREA offers the following limited response to the merits of the objections PacifiCorp raised in its motion for clarification or certification, which mirrors the response contained on the merits of the dispute in CREA's response to PacifiCorp's motion for clarification/certification.

On the merits of the discovery dispute, PacifiCorp offers nothing new that warrants reconsideration of ALJ Arlow's direction that PacifiCorp provide complete responses to CREA's first set of data requests. Although PacifiCorp asserts that its basic procedural rights were somehow violated, its arguments in its request for ALJ certification add nothing new to the arguments it previously presented at the discovery conference. ALJ Arlow should therefore

again direct PacifiCorp to provide complete responses to all of the requests contained in CREA's first set of data requests.

As noted in CREA's prior submittal triggering the discovery conference, the data requests sought three categories of materials: (1) information regarding the 2016 RFP and internal documents supporting PacifiCorp's ultimate course of action in the RFP (data requests 1.1 through 1.7); (2) information regarding the assumptions and support for use of a Wyoming wind farm as the proxy resource, as exists in the currently effective avoided cost rates (data requests 1.8 and 1.9); and (3) information and documents related to PacifiCorp's need for renewable resources, including inconsistent statements made to the legislature and documents produced in the ongoing renewable implementation plan docket (data requests 1.10 and 1.11). PacifiCorp's motion for clarification/certification provides no argument whatsoever regarding the second and third categories of requests, and therefore concedes that ALJ Arlow correctly directed complete responses to those requests.¹ PacifiCorp only actually presents argument disputing its obligation to provide information related to the RFP, but its sole argument lacks merit.

The requested RFP information was *placed in issue by PacifiCorp* in support of PacifiCorp's position. One of the most critical disputed issues in setting PacifiCorp's avoided costs in this proceeding and the precursor proceedings has been the proper cost assumptions for PacifiCorp's next avoidable wind facility. CREA and OPUC Staff have argued that the OPUC should require PacifiCorp to use the cost assumptions from its acknowledged 2015 Integrated

¹ Indeed, just yesterday, PacifiCorp provided supplemental responses to data requests 1.9 and 1.10, further conceding these topics are relevant and complete responses are also necessary to data requests 1.8 and 1.11.

Resource Plan (“IRP”) for the purpose of setting avoided cost rates, but PacifiCorp has argued that the lower costs for a wind facility contained in its post-hoc, *unacknowledged* 2015 IRP Update are more reasonable. *See* Order No. 16-307 at App. A at 4-6. The OPUC has a well-established policy not to set avoided costs based upon an *unacknowledged* IRP Update. *See* Order No. 14-058 at 25-26. Thus, recognizing it had to somehow legitimize its *unacknowledged* 2015 IRP Update, PacifiCorp directly pointed to the alleged RFP results as a basis to corroborate the *unacknowledged* 2015 IRP Update’s cost figures through its Supplemental Application in docket UM 1729 (cited in the data requests themselves), and then apparently presented those RFP results (or some summary of them) to the OPUC in an ex parte presentation of the RFP results on July 26, 2016. The RFP information requested is therefore inextricably intertwined with direct assertions PacifiCorp made to the OPUC in support of its wind proxy cost proposals from the *unacknowledged* 2015 IRP Update.

PacifiCorp’s recent filing of testimony in this docket only further supports the relevance of the RFP results that PacifiCorp has already presented to the OPUC. 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. *See* UM 1794 PAC/100, Dickman/4:9-15 (relying on its UM 1729 Supplemental Application, which was “explicitly linked to using updated cost and performance assumptions for the proxy renewable resource”); *id.* at 6:9-10 (alleging there have been “significant reductions in the cost of renewable resources since the 2015 IRP was prepared,” and the 2015 IRP Update is more accurate). Although PacifiCorp does not again cite its alleged RFP results as a basis to support the *unacknowledged* 2015 IRP Update, it already alleged the RFP results support its position and apparently presented

those results to the OPUC in an ex parte proceeding. Put simply, that bell cannot be un-rung by relabeling this docket UM 1794 instead of docket UM 1729.

The RFP information is relevant and potentially useful for multiple additional reasons aside from the reasons PacifiCorp itself already used it in a presentation to the Commissioners and its Supplemental Application in docket UM 1729. For example, CREA's data request 1.7 requests the cost assumptions for Bonneville Power Administration transmission used for purposes of evaluating RFP bids, which may enable CREA to develop its own proposal for the avoided cost rates with inclusion of an appropriate transmission cost adder to the avoided costs for an Oregon wind farm. And CREA's data request 1.6 requests all documents provided to PacifiCorp's executive officers and board of directors regarding its decision not to acquire a physical resource in the RFP, which obviously may provide insights into PacifiCorp's actual resource sufficiency position beyond the statements made in its IRP's and filings at the OPUC. PacifiCorp provides no basis to withhold such documents or a privilege log listing the materials it claims to be privileged. Furthermore, the RFP information is potentially useful and relevant for the independent reason to test the truth of the allegations PacifiCorp made earlier in this proceeding. If PacifiCorp or its witnesses misled or withheld material facts in making assertions about the RFP bid results and current market conditions, that fact would be useful for impeachment of the credibility of PacifiCorp and its witnesses in this proceeding.

PacifiCorp's objection that the material is confidential is misplaced. It is well settled that "a party's assertion that information responsive to a discovery request is confidential may not be used to delay the discovery process." OAR 860-001-0500(8). Additionally, PacifiCorp's claims are undercut by the fact that it apparently already shared much of the information (or a summary

of it) at an ex parte meeting with the Commissioners. Having done so, PacifiCorp cannot withhold the data underlying its assertions from parties here.

PacifiCorp suggests that counsel for CREA will disseminate the RFP information for use among businesses that CREA represents for the purpose of gaming the next RFP. This suggestion actually contradicts PacifiCorp's lead position in its recently filed testimony, which is that it will not hold another renewable RFP to acquire a renewable resource until at least 2028. While CREA does believe that PacifiCorp will wait more than a decade to acquire new renewable resources, the bid results in the now-closed RFP may not be highly sensitive because there would be no way to use them to PacifiCorp's disadvantage in another RFP. In any event, such concerns can be, and regularly are, addressed by the terms of a modified protective order. Indeed, ALJ Arlow appropriately directed PacifiCorp to work with the other parties and Staff to develop the necessary protective order. The allegedly sensitive nature of the material is not a basis to deny discovery.

Therefore, to the extent ALJ Arlow agrees with any of PacifiCorp's procedural challenges to the directive at the October 6th discovery conference, ALJ Arlow should again reject PacifiCorp's discovery objections and issue a written ruling compelling discovery of CREA's first set of data requests.

VI. CONCLUSION

If ALJ Arlow agrees that his prior directive was a meaningless legal nullity, as PacifiCorp asserts, CREA respectfully requests that ALJ Arlow issue a written ruling granting this motion to compel to moot PacifiCorp's procedural arguments and allow CREA and other parties to move onto the substantive merits of this docket.

RESPECTFULLY SUBMITTED this 19th day of October, 2016.

RICHARDSON ADAMS, PLLC

/s/ Gregory M. Adams

Gregory M. Adams (OSB No. 101779)
Of Attorneys for the Community Renewable
Energy Association

UM 1794 CREA Motion to Compel Discovery

Attachment 1

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PACIFICORP, dba PACIFIC POWER,)	Docket No. UM 1794
)	
Investigation into Schedule 37 - Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less)	REQUEST FOR INFORMAL RESOLUTION OF DISCOVERY DISPUTE BY THE COMMUNITY RENEWABLE ENERGY ASSOCIATION
)	
)	
)	

I. INTRODUCTION

The Community Renewable Energy Association (“CREA”) respectfully requests that the Administrative Law Judge (“ALJ”) resolve a discovery dispute, under OAR 860-001-0500(6) between CREA and PacifiCorp in the above-captioned contested case proceeding before the Oregon Public Utility Commission (“Commission” or “OPUC”). As explained below, even though ALJ Allan Arlow issued a contested case order on September 8, 2016, PacifiCorp has refused to respond to any data requests lodged by CREA until after October 14, 2016, which is the due date for PacifiCorp’s opening testimony. PacifiCorp’s intentional delay tactic has already compromised CREA’s ability to plan and develop its own testimony, which must be filed on November 18, 2016. Accordingly, CREA respectfully requests a telephone conference with ALJ Arlow this week to compel PacifiCorp to provide complete responses to CREA’s first set of data requests, as described below.

II. SUMMARY OF DISPUTE

This is a proceeding to set PacifiCorp’s avoided cost rates, which PacifiCorp first initiated after acknowledgement of its 2015 Integrated Resource Plan (“IRP”). This proceeding

to update the avoided costs was initially docketed as UM 1729, and the Commission initially rejected PacifiCorp's proposed rates on the ground that the assumptions underlying them in the IRP had been superseded by passage of Senate Bill 1547. *See* Order No. 16-117. The Commission directed the parties to “work together and propose an expedited and non-contested case process to update PacifiCorp's avoided costs in light of the passage of SB 1547.” *Id.* The negotiations failed, however, and PacifiCorp filed a Supplemental Application on June 21, 2016, proposing to use its unacknowledged 2015 IRP Update as the basis for the inputs to the proxy resource assumptions and asserting that preliminary bids into a request for proposals (“RFP”) supported its proposed avoided costs.

On June 22, 2016 and June 23, 2016, CREA filed two sets of data requests seeking to obtain supporting information supporting PacifiCorp's factual allegations regarding the RFP bids and RFP evaluations assumptions. PacifiCorp objected to providing the requested information on the grounds that the proceeding was not a contested case and that the information requested is confidential. However, in this same timeframe, on July 26, 2016, PacifiCorp also engaged in a special presentation to the Commission regarding the bids and evaluation of the then-ongoing RFP, but much of this material was designated as confidential and withheld from public disclosure or use in Commission dockets. On July 29, 2016, therefore, CREA requested informal dispute resolution to obtain the material it had requested. But ALJ Grant declined to require PacifiCorp to produce any material in discovery on the ground that the proceeding docketed as UM 1729 was not a contested case.

On August 16, 2016, the Commission addressed PacifiCorp's proposed avoided costs at the Commission's public meeting. However, since CREA and other parties had been provided

no discovery, they were effectively unable to confirm or attempt to disprove PacifiCorp's factual assertions in its Supplemental Application. Furthermore, PacifiCorp changed its position at the public meeting and presented a whole new theory of its avoided costs from that presented in its Supplemental Application. The Supplemental Application proposed a renewable resource deficiency date of 2018 and relied upon alleged bids for an Oregon wind farm into the RFP as the basis to set the proxy resource costs. In contrast, at the public meeting, PacifiCorp argued that it would not be renewable deficient until at least 2028 (or later). CREA pointed out at the public meeting that it could not respond to PacifiCorp's initial or revised arguments because CREA had been denied discovery rights regarding PacifiCorp's avoided costs.

The Commission ordered PacifiCorp to file new avoided costs with prices based on renewable and non-renewable deficiency periods beginning in 2028 based on the cost and performance data from its 2015 IRP, i.e. *not* the 2015 IRP Update or the RFP bids. *See* Order No. 16-307. However, recognizing that other parties had no opportunity to vet all available data, the Commission further directed: "an expedited contested case proceeding *shall 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.*" *Id.* (emphasis added).

On August 22, 2016, PacifiCorp filed its revised avoided cost rates in compliance with Order No. 16-307. The renewable rates are set based upon the assumption that PacifiCorp would build a wind farm in Wyoming in 2028 with a higher capacity factor and lower avoided costs than the previously discussed Oregon wind farm, even though Order No. 16-307 and PacifiCorp's prior arguments and data sets did not advocate for a Wyoming wind farm. *See PacifiCorp's Compliance Filing*, Docket No. UM 1729 (Aug. 22, 2016). Those rates are

currently in effect, and it appears they will remain in effect unless and until the Commission orders a revision in this proceeding.

On August 26, 2016, the Commission reassigned this proceeding to the newly created docket UM 1794, and CREA orally petitioned to intervene as a party shortly thereafter at the prehearing conference. On September 8, 2016, ALJ Arlow issued the prehearing conference memorandum, which, *inter alia*, memorialized the rulings granting CREA's petition to intervene as a party with full contested case rights and approved the schedule proposed by the parties.

On September 9, 2016, CREA served its first set of data requests to PacifiCorp. Data requests 1.1 through 1.7 sought much of the information regarding the RFPs that had been withheld during the non-contested case in UM 1729 and internal documents supporting PacifiCorp's ultimate course of action in the RFP. Additionally, data requests 1.8 and 1.9 sought information regarding the assumptions and support for use of a Wyoming wind farm as the proxy resource, as exists in the currently effective avoided cost rates. Data requests 1.10 and 1.11 requested information and documents related to PacifiCorp's need for renewable resources, including inconsistent statements made to the legislature and documents produced in the renewable implementation plan docket. The data requests and PacifiCorp's responses are provided as Attachment 1 to this submission.

PacifiCorp and CREA engaged in a telephone call during the week of September 19, 2016, due to PacifiCorp's indication that it intended to object to some of the data requests. Counsel for CREA offered to walk through individual requests with counsel for PacifiCorp if clarification was necessary or if PacifiCorp believed that producing all of the requested material would be too burdensome. However, counsel for CREA indicated that it was not willing to agree

to wait until after PacifiCorp filed its opening testimony to obtain the information requested because CREA needs to begin developing its own position as to PacifiCorp's avoided costs at this time. PacifiCorp never asked for clarification or any limitation on any individual data requests. Instead, PacifiCorp provided a long list of objections at the close of business on the due date for the responses, September 23, 2016. *See Attachment 1.*

Subsequently, counsel for CREA attempted to better understand PacifiCorp's position via electronic mail messages, and again offered to meet and confer with regard to the scope or meaning of any of the individual data requests. However, counsel for PacifiCorp essentially confirmed that PacifiCorp does not believe that it must accept or process any discovery requests until after the filing of PacifiCorp's opening testimony on October 14, 2016. The electronic mail messages between the parties are provided as Attachment 2 to this submission.

Because the parties are unable to resolve this discovery dispute and a motion to compel would further delay access to the avoided cost information, CREA now seeks informal resolution by ALJ Arlow.

III. ARGUMENT

As noted above, this proceeding is now a formal contested case proceeding to set the avoided costs, and the procedural order therefore states the Commission will "use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001." *See Prehearing Conference Memorandum*, at Attachment (Sept. 8, 2016). The ruling further provides:

"You have the right to respond to *all issues identified* and present evidence and witnesses on those issues. See OAR 860-001-0450 through OAR 860-001-0490. *You may obtain discovery from other parties through depositions, subpoenas, and data requests.* See ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540."

Id. (emphasis added). There is no statement in the procedural order or the referenced rules or statutes placing any restrictions on when discovery may commence.

Under the applicable rules, “[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.” ORCP 36(B); *see also* OAR 860-001-0540(1) (stating any party may submit data requests to any other party, subject to the discovery rules in the ORCP). In fact, the Commission expects parties to err “on the side of producing too much information . . . rather than too little.” *In re Portland General Electric Co.*, Order No. 09-046 at 8 (Feb. 5, 2009).

With regard to the dispute at hand, the information and material requested by CREA is subject to discovery at this time because it is directly relevant to PacifiCorp’s avoided costs and obviously likely to lead to discovery of admissible evidence. The purpose of this proceeding is to set PacifiCorp’s avoided costs. The Commission expressly stated this contested case proceeding “shall 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.” *See* Order No. 16-307. All of the information requested by CREA relates to issues raised previously in the non-contested case in docket UM 1729 or PacifiCorp’s subsequent compliance filing that emerged from that non-contested case. The information requested regards three main topics: (1) the recent RFP for renewable resources which PacifiCorp itself proposed to form the basis for its avoided costs just a few months ago and much of which was already shared with the Commissioners in an *ex parte* meeting on July 26, 2016 (data requests 1.1 through 1.7); (2) the basis for assuming that a Wyoming wind farm could be the proxy resource as proposed by

PacifiCorp and approved by the OPUC in PacifiCorp's compliance filing avoided costs which are currently in effect and will likely remain in effect unless different rates are adopted in this case (data requests 1.8 and 1.9); and (3) information related to PacifiCorp's renewable resource sufficiency position and inconsistent statements regarding the impacts of Senate Bill 1547 on its physical compliance needs (data requests 1.10 and 1.11). All of this information regards highly relevant topics.

The crux of PacifiCorp's objection is an assertion that CREA has no right to discovery prior to the time that PacifiCorp files its testimony in this docket. But there is no basis for such a restriction in any rule or order applicable to this case. Such a restriction compromises CREA's ability to plan its own case and frustrates CREA's ability to engage in more than a single round of discovery, which is always necessary in order to uncover additional information in follow-up questions. Furthermore, as a party to this proceeding, CREA has a statutory right to conduct discovery, including by written interrogatories of other parties, which right is embodied in the Commission's rules entitling CREA to lodge data requests. *See* ORS 756.538(2) ("any party to the proceeding may take testimony of any person by . . . written interrogatories"); OAR 860-001-0540(1) (data requests are written interrogatories or requests for production of documents).

In fact, immediate discovery is warranted because this proceeding is moving forward on an expedited basis, with CREA's testimony due approximately one month after PacifiCorp's testimony. PacifiCorp filed its original avoided cost update on March 1, 2016, and CREA has not had the opportunity to conduct discovery on PacifiCorp's filings. Given that PacifiCorp frequently objects to data requests and rarely provides complete answers, it is likely that the only way CREA can complete discovery in time to submit its own testimony is if PacifiCorp is

required to promptly and completely respond to all discovery requests, including those at issue in this submission.

Finally, PacifiCorp's position erects procedural obstacles that frustrate qualifying facilities' right to sell their output at PacifiCorp's full avoided costs. Avoided costs are the incremental costs of PacifiCorp's next avoidable generation resources. 18 C.F.R. § 292.101(b)(6). That topic obviously opens the door to a very wide range of potentially relevant information – almost all of which is exclusively within PacifiCorp's possession. Under 18 C.F.R. § 292.302(e)(2) and OAR 860-029-0080(6), PacifiCorp has the burden of coming forward with justification for its proposed avoided costs. However, it is well established that utilities, including PacifiCorp, are reluctant to purchase from independent QF generators and have no incentive to cooperate with such QFs or to pay the full avoided costs for QF output. *See FERC v. Mississippi*, 456 U.S. 742, 750 (1982). It would thwart the intent of federal and state law to allow PacifiCorp to unilaterally limit the scope of a proceeding to set its own avoided costs, as it apparently proposes to do here. Without full and complete discovery, the other parties and the Commission itself will be deprived of the ability to meaningfully vet PacifiCorp's avoided costs. Therefore, PacifiCorp must immediately produce the requested information in order to allow parties other than PacifiCorp to develop their own position on PacifiCorp's avoided costs.

IV. CONCLUSION

CREA requests that the ALJ direct PacifiCorp to provide complete responses to CREA's first set of data requests in an expedited timeframe within three days of the ALJ's resolution of this dispute.

RESPECTFULLY SUBMITTED this 4th day of October, 2016.

RICHARDSON ADAMS, PLLC

/s/ Gregory M. Adams

Gregory M. Adams (OSB No. 101779)
Of Attorneys for the Community Renewable
Energy Association

Attachment 1

PacifiCorp's Responses to CREA's First Set of Data Requests



825 NE Multnomah, Suite 2000
Portland, Oregon 97232

September 23, 2016

Gregory M. Adams
Richardson & O'Leary PLLC
515 N. 27th Street
P.O. Box 7218
Boise, Idaho 83702
greg@richardsonandoleary.com

RE: OR Docket No. UM-1794
CREA 1st Set Data Request (1-12)

Please find enclosed PacifiCorp's Responses to CREA's 1st Set Data Requests 1.1-1.12.

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

Sincerely,

A handwritten signature in black ink that reads "Natasha Siores" followed by a stylized flourish.

Natasha Siores
Pacific Power Regulation

CREA Data Request 1.1

Reference PacifiCorp's June 21, 2016 Supplemental Application in UM 1729 at page 4, asserting: "Preliminary review of the lowest cost bids for wind projects located in the Pacific Northwest submitted into the 2016 resource RFP have a capacity-weighted average capital cost of \$1,810/kW and a capacity weighted average capacity factor of 34.9%".

Please provide all of the referenced bids, and all work papers used by PacifiCorp to develop the weighted average costs and capacity factors (with bids identified by number instead of bidder names if necessary for confidentiality concerns).

Response to CREA Data Request 1.1

The Company objects 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. Furthermore, the Company has not yet made its initial filing in this proceeding. In addition, the Company considers the information requested to be commercially sensitive and highly confidential.

CREA Data Request 1.2

Reference PacifiCorp's June 21, 2016 Supplemental Application in UM 1729 at page 4, asserting: "Preliminary review of the lowest cost bids for wind projects located in the Pacific Northwest submitted into the 2016 resource RFP have a capacity-weighted average capital cost of \$1,810/kW and a capacity weighted average capacity factor of 34.9%".

Please provide the following information regarding the referenced bids (with bids identified by number instead of bidder names if necessary for confidentiality concerns.)

- (a) The number of bids included in PacifiCorp's sample of "lowest cost bids".
- (b) The number of bids for a physical wind resource in the RFP total.
- (c) For each bid in the sample of "lowest cost bids" provide:
 - i. Nameplate capacity;
 - ii. Capacity Factor;
 - iii. Interconnecting Utility;
 - iv. Wheeling utility(ies) between point of interconnection and PacifiCorp's system;
 - v. Whether the full output of the plant can be designated as a network resource by PacifiCorp Transmission without any network upgrades;
 - vi. Whether PacifiCorp would use third-party transmission to move the output from the point of delivery on PacifiCorp's system to PacifiCorp loads, and if yes, the amount and type of such third-party transmission; and
 - vii. Whether the bid is a utility-ownership or a PPA structure.

Response to CREA Data Request 1.2

The Company objects 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. Furthermore, the Company has not yet made its initial filing in this proceeding. In addition, the Company considers the information requested to be commercially sensitive and highly confidential.

CREA Data Request 1.3

Reference PacifiCorp's June 21, 2016 Supplemental Application in UM 1729 at page 4, asserting: "Preliminary review of the lowest cost bids for wind projects located in the Pacific Northwest submitted into the 2016 resource RFP have a capacity-weighted average capital cost of \$1,810/kW and a capacity weighted average capacity factor of 34.9%".

Have the capacity factors of each of the bids included in PacifiCorp's sample of the "lowest cost bids" been approved by "a qualified and independent third-party technical expert to review the expected wind capacity factor associated with each project," as required for any short-list bid in an RFP under Order No. 13-204? If yes, please provide the reports generated by the independent expert for each project (with bids identified by number instead of bidder names if necessary for confidentiality concerns).

Response to CREA Data Request 1.3

The Company objects to this request as seeking information outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the Company has not yet made its initial filing in this proceeding.

CREA Data Request 1.4

Reference PacifiCorp's June 21, 2016 Supplemental Application in UM 1729 at page 4, discussing preliminary bids into PacifiCorp's 2016 RFP for renewable resources. Please provide a complete list of the final short list of bids, and explain in detail any changes to, or withdrawal of, any of those bids made by bidders after development of the final short list.

Response to CREA Data Request 1.4

The Company objects 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. Furthermore, the Company has not yet made its initial filing in this proceeding. In addition, the Company considers the information requested to be commercially sensitive and highly confidential.

CREA Data Request 1.5

Reference PacifiCorp's June 21, 2016 Supplemental Application in UM 1729 at page 4, discussing preliminary bids into PacifiCorp's 2016 RFP for renewable resources. Please provide a complete list of the finally selected bids for REC purchases, including:

- (i) location (county and state) and resource type of the underlying physical resource generating the RECs;
- (ii) commercial online date of the physical resource generating the RECs;
- (iii) utility purchasing the electric energy from the facility;
- (iv) QF or non-QF;
- (v) vintage of RECs purchased;
- (vi) final price of RECs (\$/MWh); and
- (vii) initial bid price at the time of development of final short list (\$/MWh).

Response to CREA Data Request 1.5

The Company objects 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. Furthermore, the Company has not yet made its initial filing in this proceeding.

CREA Data Request 1.6

Please provide the date that PacifiCorp management finally approved the procurement decision in the 2016 RFP for renewable resources and please provide all documents provided to executive officers or members of the Board of Directors as part of the approval process. If any such documents are alleged to contain privileged information, please provide a complete privilege log that includes the date, the contents of the withheld information or document, and the individuals that were party to the privileged communications or documents.

Response to CREA Data Request 1.6

The Company objects to this request as seeking information outside the scope of this proceeding, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, the Company has not yet made its initial filing in this proceeding. The Company further objects to this request as requesting information protected by the attorney-client privilege or attorney work product doctrine.

CREA Data Request 1.7

Please provide the assumed cost of BPA long-term firm point-to-point transmission and ancillary services utilized for the life of the resource supporting bids that require BPA transmission for purposes of evaluation of bids submitted into PacifiCorp's 2016 RFP for renewable resources. Please provide work papers calculating the cost assumption and an explanation for all inputs into the cost, including source of current rate and escalation rates for future BPA transmission rate cases.

Response to CREA Data Request 1.7

The Company objects to this request as seeking information outside the scope of this proceeding, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the Company has not yet made its initial filing in this proceeding.

UM 1794 / PacifiCorp
September 23, 2016
CREA Data Request 1.8

CREA Data Request 1.8

Please explain why the Company did not accept bids from physical resources located in Wyoming in the PacifiCorp's 2016 RFP.

Response to CREA Data Request 1.8

The Company objects to this request as seeking information outside the scope of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the Company has not yet made its initial filing in this proceeding. In addition, the Company considers the information requested to be commercially sensitive and highly confidential.

UM 1794 / PacifiCorp
September 23, 2016
CREA Data Request 1.9

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.

Response to CREA Data Request 1.9

The Company objects 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. The Company has not yet made its initial filing in this proceeding.

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 “incent 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.

Response to CREA Data Request 1.10

The Company objects to this request as seeking information outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the Company has not yet made its initial filing in this proceeding.

UM 1794 / PacifiCorp
September 23, 2016
CREA Data Request 1.11

CREA Data Request 1.11

Please provide complete copies, including any information subject to any applicable protective orders, of all filings and discovery responses made by PacifiCorp in ongoing docket UM 1790, the 2017-2021 RPIP docket. This is an ongoing request throughout this proceeding.

Response to CREA Data Request 1.11

The Company objects 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. Furthermore, the Company has not yet made its initial filing in this proceeding.

UM 1794 / PacifiCorp
September 23, 2016
CREA Data Request 1.12

CREA Data Request 1.12

Please provide copies of PacifiCorp's responses to the data requests of all other parties in this proceeding. Please note this is an ongoing request.

Response to CREA Data Request 1.12

CREA will be provided copies of PacifiCorp's responses to the data requests of all other parties in this docket.

Attachment 2

Correspondence Between CREA and PacifiCorp

From: [Greg Adams](#)
To: [Apperson, Erin](#)
Subject: RE: OR UM 1794 PacifiCorp's Responses to CREA Set 1 (1-12)
Date: Thursday, September 29, 2016 2:20:45 PM

Erin,

Given that PacifiCorp is objecting to the entire data set and producing no information or responsive material to any of the requests, and has asked for no clarification or limitation with regard to any of the individual requests, it appears to me that further discussion will be unproductive.

For obvious reasons, all of the requested information is likely to lead to discovery of admissible evidence that would be relevant to PacifiCorp's avoided costs, which is the issue in this proceeding. The information requested regards the recent RFP for renewable resources which PacifiCorp itself proposed to form the basis for its avoided costs just a few months ago, ref. data requests 1.1-1.7; the basis for assuming that a Wyoming wind farm could be the proxy resource as proposed by PacifiCorp (and approved by the PUC) in its compliance filing avoided costs which are currently in effect during this proceeding; ref. request 1.8-1.9; and information related to PacifiCorp's renewable resource sufficiency position and inconsistent statements regarding the impacts of SB 1547 on its physical compliance needs, request 1.10-1.11.

As I explained during our phone call, CREA needs to obtain the information requested in order to evaluate the available information potentially relevant to PacifiCorp's avoided costs over the next 20 plus years, which is the issue in this proceeding. This is a contested case proceeding, and CREA, as a party to the contested case proceeding, has a procedural right to obtain discovery of any matter or information within PacifiCorp's possession that is likely to lead to the discovery of admissible evidence. There is no basis in the PUC's procedural rules for PacifiCorp to limit the substantive scope of discovery to the matters PacifiCorp chooses to address in its yet-to-be-filed testimony, and nor is there any basis to limit the temporal scope of discovery to the time during which PacifiCorp files its testimony. Doing so limits CREA's ability to evaluate the facts, and identify its potential witnesses to address those facts.

CREA intends to seek resolution from the ALJ or the PUC by the end of this week. If PacifiCorp changes its mind, please let me know.

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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the same either electronic or printed. Thank you.

From: Apperson, Erin [mailto:Erin.Apperson@pacificcorp.com]
Sent: Thursday, September 29, 2016 12:13 PM
To: Greg Adams
Subject: RE: OR UM 1794 PacifiCorp's Responses to CREA Set 1 (1-12)

Greg,

Consistent with our discussion on September 19, PacifiCorp has objected to CREA's first data request set in UM 1794 as requesting information outside the scope of this proceeding, among other objections. CREA's questions focus primarily on PacifiCorp's June 21 filing in UM 1729, which was not a contested case proceeding. To the extent that you would like to hold a call to discuss the particular questions, please let me know.

Erin Apperson
Attorney, Pacific Power
PacifiCorp
825 NE Multnomah St., Suite 1800
Portland, OR 97232
|503-813-6642 office |503-964-3542 cell
Erin.Apperson@pacificcorp.com

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From: Greg Adams [mailto:Greg@richardsonadams.com]
Sent: Wednesday, September 28, 2016 12:35 PM
To: Apperson, Erin
Subject: [INTERNET] FW: OR UM 1794 PacifiCorp's Responses to CREA Set 1 (1-12)

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.

Erin,

I am a little confused by these responses. Based on our call earlier last week, I was expecting a call to go through the different items to see if we could reach agreement on what would be provided or withheld. It appears that PacifiCorp is now taking the position that it will provide no discovery prior

to the time that it files its testimony.

It would be helpful if you could clarify the Company's position so CREA can decide how to move forward from here.

Please consider this an attempt to meet and confer to resolve this discovery dispute.

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: McNay, Kaley [<mailto:Kaley.McNay@pacificorp.com>]
Sent: Friday, September 23, 2016 5:05 PM
To: Greg Adams
Cc: Watkins, Betsy; Hansen, Tarie; C&T Discovery; Siores, Natasha; Apperson, Erin; Angell, Jennifer; Haney, Lauren; Stanfill, Dagmar
Subject: OR UM 1794 PacifiCorp's Responses to CREA Set 1 (1-12)

Attached above are PacifiCorp's Responses to CREA Set 1 (1-12). Please let me know if you have any trouble opening the attached file.

Thank you.

Kaley McNay
PacifiCorp
Senior Regulatory Operations Coordinator
Direct: 503-813-6257

Attachment 5

PacifiCorp's Response to CREA's Motion to Compel



825 NE Multnomah, Suite 2000
Portland, Oregon 97232

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.

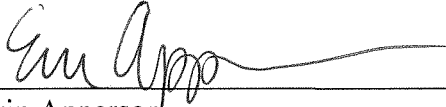
¹⁵ See Exhibit PAC/101; Exhibit PAC/102.

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

825 NE Multnomah St., Suite 1800
Portland, OR 97232
|503-813-6642 office |503-964-3542 cell
Erin.Apperson@pacificorp.com

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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503-756-7533 (tel)
503-334-2235 (fax)
irion@sanger-law.com

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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
"erin.apperson@pacificorp.com" <erin.apperson@pacificorp.com>, "jeff@oseia.org" <jeff@oseia.org>,
"bryce.dalley@pacificorp.com" <bryce.dalley@pacificorp.com>, Dina Dubson Kelley <dina@renewablenw.org>,
"jravenesanmarcos@yahoo.com" <jravenesanmarcos@yahoo.com>, "erica@oseia.org" <erica@oseia.org>, Irion Sanger
<irion@sanger-law.com>, "brian.skeahan@yahoo.com" <brian.skeahan@yahoo.com>, "silvia@renewablenw.org"
<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
515 N. 27th Street, 83702
P.O. Box 7218, 83707
Boise, Idaho
Voice: 208.938.2236
Facsimile: 208.938.7904

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