

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1794

In the Matter of

PACIFICORP, dba PACIFIC POWER

ORDER

Investigation into Schedule 37 - Avoided
Cost Purchases from Qualifying Facilities
of 10,000 kW or Less.

DISPOSITION: MOTIONS FOR CERTIFICATION GRANTED; RULINGS
ON MOTIONS TO COMPEL AFFIRMED; SCOPE OF
PROCEEDINGS TO BE ADDRESSED IN SUBSEQUENT
ORDER

I. SUMMARY

In this order, we affirm the rulings of the administrative law judge (ALJ) granting in part and denying in part the motion to compel filed by the Community Renewable Energy Association (CREA) against PacifiCorp, dba Pacific Power and denying the motion to compel filed by the Renewable Energy Coalition (the Coalition) against PacifiCorp.

II. BACKGROUND

To provide the proper context for our decision, we begin with a procedural history of this investigation and the discovery disputes that gave rise to the pending requests for certification and clarification.

A. UM 1794 Investigation

We opened this investigation following a series of actions related to or affecting PacifiCorp, dba Pacific Power's Schedule 37 avoided cost prices. First, PacifiCorp filed Schedule 37 avoided cost updates on March 1, 2016. This filing was made in response to our February 29, 2016 acknowledgement of the company's 2015 Integrated Resource Plan (IRP).¹ We opened docket UM 1729(1) to address that update.

¹ OAR 860-029-0080(3) provides that "Each public utility shall file with the Commission draft avoided-cost information with its least-cost plan pursuant to Order No. 89-507 and file final avoided-cost

One week after PacifiCorp filed its update, the Governor signed Senate Bill 1547 into law. Among other things, the new law requires PacifiCorp to significantly increase its obligations under the Renewable Portfolio Standards (RPS)—the utility is required to serve 50 percent of its Oregon retail load with renewable energy by 2040. Because PacifiCorp’s 2015 IRP did not address the new law’s impact on either the company’s renewable resource acquisition strategy or its avoided costs, we declined to approve the company’s March 1, 2016 avoided cost updates in Order No. 16-117. Instead, we directed PacifiCorp, Staff, and interested parties to work together to propose an expedited and non-contested case process to update PacifiCorp’s avoided costs in light of the passage of SB 1547.

Next, on March 31, 2016, PacifiCorp filed an update to its 2015 IRP (docket LC 62), which contained revised resource cost and performance data. The new data indicated that the company had sufficient banked renewable energy credits (RECs) to achieve compliance with Oregon’s RPS, as amended by SB 1547, through 2025.

Meanwhile, the parties in docket UM 1729(1) were unable to resolve issues relating to updating PacifiCorp’s Schedule 37 in light of SB 1547. Consequently, on June 21, 2016, PacifiCorp filed a supplemental update to its standard avoided cost schedule. We addressed PacifiCorp’s filing at our August 16, 2016 Regular Public Meeting and, as memorialized in Order No. 16-307: (1) directed PacifiCorp to file an amended Schedule 37 based on renewable and non-renewable deficiency periods beginning in 2028, cost and performance data from its acknowledged 2015 IRP and updated gas and electricity prices; and (2) ordered 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.” This docket, UM 1794, is that expedited contested case proceeding.

B. Discovery Disputes

Two discovery disputes have arisen in this proceeding. First, a dispute arose related to the CREA’s desire to obtain bid information from recent PacifiCorp requests for proposals (RFPs) that the company considers highly confidential and commercially sensitive. In an effort to mediate the dispute, ALJ convened an expedited telephone conference with PacifiCorp, the CREA, the Coalition, and Commission Staff. During the conference, the ALJ directed the parties to work together to develop a secure process allowing review of the information for purposes of preparing testimony, while limiting access to data susceptible to commercial use or advantage by any person associated with the intervenors.²

information within 30 days of Commission acknowledgment of the least-cost plan to be effective 30 days after filing.”

² OAR 860-001-0500(6) provides a process for the ALJ to “facilitate the resolution of discovery disputes.” The effort of the ALJ to find common ground among the litigants under this provision is not a ruling in the sense of a binding and appealable action parties are ordered to take during regulatory proceedings. In each of his rulings, discussed below, the ALJ consistently characterized the outcome of the expedited telephone conference as a failed effort at resolution of the issues between the parties, rather than as a ruling directed at PacifiCorp to comply with CREA’s request. Consequently, all argument by the parties with respect to

After the facilitation effort to find common ground proved unsuccessful, PacifiCorp filed a motion on October 12, 2016, for clarification or alternatively, certification, expressing concern that the ALJ's direction was beyond the purposes of an informal discovery conference as it effectively compelled PacifiCorp to provide the information at issue, even though CREA had not yet filed a motion to compel. CREA responded on October 19, 2016, asking the ALJ to deny PacifiCorp's motion and in to instead compel the company to produce the requested information and data.

On November 2, 2016, the ALJ issued a ruling granting CREA's request that PacifiCorp provide cost characteristics for the Wyoming Wind Farm (DR 1.9), but denying CREA's request for information about bids for wind projects in the 2016 Resource RFP (DR 1.1-1.8). The ALJ declined to rule on two remaining data requests, DR 1.10, to which the company responded under protest, and DR 1.11 seeking data from docket UM 1790 and the 2017-2021 Renewable Portfolio Implementation Plan (RPIP), because he found them to be, respectively, moot and premature.

A second discovery dispute arose between PacifiCorp and the Coalition. On October 31, 2016, the Coalition filed a motion to compel PacifiCorp to conduct computer runs yielding revisions to its 2015 IRP (DR 1.2 and 1.3) and data requests seeking complete working copies of PacifiCorp's IRP System Optimizer (SO) and PaR models (DR 1.4). On November 18, 2016, the ALJ issued a ruling denying the Coalition's motion.

III. PENDING REQUESTS TO CERTIFY AND FOR CLARIFICATION

CREA and the Coalition jointly seek clarification of the scope of this investigation and certification of the ALJ's rulings that denied certain requests for discovery (the CREA/Coalition motion). In order to provide parties with the certitude necessary to move forward with resolution of the issues in this docket, we certify the ALJ rulings referenced above, dated November 2, 2016 and November 18, 2016.

A. Scope of Proceedings

We find that the resolution of the motions to compel does not turn on a determination of the full scope of this proceeding. Consequently, we will provide in a subsequent order, a more definitive list of those issues encompassed by UM 1729(1), which will have a direct impact on the calculation of PacifiCorp's updated avoided cost prices.

B. Evidentiary Standard

The legal standard for discovery is whether the information sought is relevant to the claim of the party seeking discovery. OAR 860-001-0540 (1) provides that such discovery must be pursuant to the Oregon Rules of Civil Procedure, which, in this case is Rule 36B(1), and that the information sought in discovery must be reasonably calculated to lead to the discovery of admissible evidence.

the weight to be accorded to the "ruling by the ALJ" at the expedited telephone conference of October 6, 2016 are disregarded.

1. CREA Request for Discovery

As noted, CREA seeks to obtain bid information from recent PacifiCorp RFPs that the company considers highly confidential and commercially sensitive. CREA and the Coalition argue that 2016 RFP materials contain information relevant to calculating the costs of an avoided renewable resource and determining whether it is reasonable to assume the company would not acquire another renewable resource until 2028. CREA DR 1.6 asks PacifiCorp to provide documents presented to company management regarding the course of action after the 2016 RFP. CREA claims that the purpose of the RFP was to determine whether PacifiCorp should acquire a physical renewable resource in the near term in order to comply with SB 1547, despite prior plans in the 2015 IRP to not acquire any renewable resources in the next 20 years.

CREA also cites the November 28, 2016 Staff Report in docket UE 313 (docketed on December 1, 2016) and the December 6, 2016 Commission Public Meeting approving the company's purchase of Renewable Energy Certificates (RECs), in which PacifiCorp voluntarily produced its 2016 RFP analysis. In that report, Staff notes that PacifiCorp evaluated both new generation proposals and REC proposals against a base-case alternative of building new generation on a "just-in-time" basis. The just-in-time alternative involves forecasting the future cost of new renewable generation. Due to the uncertainty regarding the future cost declines for renewable generating resources, PacifiCorp evaluated several scenarios for the just-in-time comparison. These scenarios included both low and high trends in renewable generation costs. PacifiCorp found that the least-cost method of satisfying the new RPS was to purchase RECs through long-term contracts. PacifiCorp chose to engage in early REC procurement at a cost point that results in a conservatively low level of early REC procurement

CREA argues that because the company provided this information to the Commission and relies on it to support a decision to purchase RECs, the information is not beyond the reach of discovery. CREA represents that the information will not be supplied to past or future RFP bidders and states that PacifiCorp may redact bidder identities.

Staff supports CREA's requests. It contends that information relating to PacifiCorp's 2016 RFP is pertinent to the question of whether the company relied on information in the 2015 IRP to establish avoided cost prices. Because, in Staff's view, PacifiCorp expressly relies on preliminary results of the RFP in its June 21, 2016 filing to support use of cost and performance data from the 2015 IRP Update rather than the acknowledged 2015 IRP, Staff believes it is unfair to deny CREA the opportunity to review that data.

PacifiCorp responds that a June 21, 2016 supplemental update to its standard avoided cost prices utilized inputs from the company's 2015 IRP Update, not the RFP bids at issue. It did so, reasoning that it was appropriate to accelerate the renewable resource deficiency date to 2018 if costs and performance measures were also updated. PacifiCorp asserts that the RFP bids were not used as evidence but were the subject of a casual comment that their preliminary results were consistent with data in the 2015 IRP Update

for cost and performance.³ PacifiCorp also argues that the issuance of the RFPs did not mean that the company was resource deficient; instead they were issued to test the market and evaluate 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. The company states it never relied on the RFP results to develop its prices either in UM 1729(1), or the June 21, 2016 update, and are irrelevant regardless of their timing. In any case, PacifiCorp argues that disclosure of RFP data would have a chilling effect on future bidding because of the fear of disclosure of confidential bid information.

Discussion and Resolution

Although the Commission ordered a more thorough vetting of the company's avoided costs via this proceeding, in adopting Staff's report, we did not support the use of an unacknowledged IRP Update as the source for avoided resource characteristics and costs.

We also adopted the view that "the use of a 'preliminary review' of bid responses to the Company's RFP, which are not available for review, to support the avoided cost price update is unreasonable."⁴ When we directed that "a more thorough vetting of the issues raised in the proceeding" go forward, we did not intend that such a vetting would include an analysis of any of the bids submitted to the company after the 2015 IRP, unless PacifiCorp had chosen to make awards pursuant to the RFP.

Since PacifiCorp has not relied on the bid responses either to test the validity of its proxy resource or to otherwise calculate its avoided costs, there is no relevant basis on which information sought by CREA with respect to those bids should be provided, unless that were the only available means to test the reasonableness of the proxy resource. However, having had its motion to compel granted with respect to the Wyoming Wind Farm proxy resource (DR 1.9), CREA is free to examine the reasonableness of all of the costs associated with it and to put forward testimony that would contradict the positions taken by PacifiCorp witnesses, e.g., answering the questions raised regarding whether the assumption of a 35 percent capacity factor is reasonable in calculating the avoided costs of the proxy resource and whether transmission costs have been adequately accounted for.

We also find that any events that occurred in a special public meeting in a different docket are beyond the scope of this proceeding and cannot act as a basis for discovery.

The CREA data requests DR 1.1-1.8 therefore do not meet the ORCP standard for relevance. We affirm the ruling of the Administrative Law Judge issued on November 2, 2016 and deny the motion to compel with respect to DR 1.1-1.8.

³ PacifiCorp motion for clarification or, alternatively, certification at 3 (Oct 12, 2016), citing its supplemental application in UM 1729(1) at 4 (Jun 21, 2016).

⁴ Order No. 16-307, Appendix A at 6 (Aug 18, 2016).

2. *Coalition Request for Discovery*

The Coalition requests that PacifiCorp conduct computer runs yielding revisions to its 2015 IRP with complete working copies of PacifiCorp's IRP SO and PaR models. The Coalition's DRs 1.2-1.3, which seek revisions to the 2015 IRP, state:

DR 1.2: Please refer to PacifiCorp's 2015 integrated resource plan (IRP) Table 8.1 at 182 and IRP Update at 2-3. Please provide an updated Table 8.1 assuming: 1) the increased renewable portfolio standard requirements in SB 1547; and 2) the retirements of Naughton 3 in 2018 and Cholla 4 in 2025. Provide all supporting work papers.

DR 1.3: Please refer to PacifiCorp's 2015 integrated resource plan (IRP) Table 8.1 at 182 and IRP Update at 2-3. Please provide an updated Table 8.1 assuming: 1) the increased renewable portfolio standard requirements in SB 1547; 2) the retirements of Naughton 3 in 2018 and Cholla 4 in 2025 and 3) for each portfolio listed in table 8.1, cap the amount of front office transactions at 13% of all energy from new resources. Provide all supporting work papers.

Coalition DR 1.4 sought complete working copies of the company's IRP SO and PaR models so that it would have the opportunity to run various scenarios, presumably including the ones above, itself.

The Coalition and CREA believe this information is important, because PacifiCorp has refused to adhere to Commission methodologies for determining avoided cost rates by excluding several issues from its model runs during preparation of its 2015 IRP, including the likelihood of early coal plant retirements. According to these parties, PacifiCorp's failure lowered avoided cost rates and pushed the sufficiency period out, despite the fact that the company knew it would have an increasing need for renewable generation. Prior to the 2015 IRP, PacifiCorp had never given a reason for parties to seek access to the IRP models because the sufficiency period was only a few years out.

Staff considers the model runs sought by the Coalition as pertinent to this proceeding. Staff believes that the Coalition's efforts to test the reasonableness of PacifiCorp's assumption in its acknowledged 2015 IRP—that PacifiCorp will not need a new thermal resource until 2028 in light of subsequent events—falls within the scope of this investigation as ordered in Order No. 16-307.

PacifiCorp responds that the ruling of the ALJ denying the Coalition's motion to compel was correct because the request to run the computer model with a combination of stale assumptions from 2014 and present day assumptions would inappropriately allow intervenors to "cherry-pick" variables to produce a preferred outcome. The company also claims that re-running computer models would be unduly burdensome as it would take significant time and expense to do the nearly 100 + model runs, and would impede

the company's development of the 2017 IRP. Furthermore, PacifiCorp argues that the intervenors may contract with the vendor to do the model runs as other intervenors have chosen to do.

Discussion and Resolution

Building a restrictive analysis that does not revisit all assumptions, some of which may have been contingent upon each other, significantly reduces the probative value and relevance of the evidence created. Furthermore, while the Coalition was in possession of Table 8.1 and had the opportunity to influence the IRP runs during the IRP process, they did not seek to change the variables until after the IRP process was completed. Rather, they argue that changed circumstances require new assumptions with respect to some variables, but wish to avoid revisiting all of the inputs.

The Coalition also argues that, although the request is indeed burdensome, PacifiCorp alone is in the position to create and provide the information or the programs to rerun the computer simulations. However, the Coalition does not deny that PacifiCorp may be contractually prevented from complying with its request for copies of the proprietary programs. Furthermore, the Coalition has not, in the weeks subsequent to the ALJ's ruling, made any representation that it has attempted to acquire rights to the computer programs or found that the costs and time investment to run the programs with the proposed changed variables was prohibitive in terms of time or cost. The Coalition has demonstrated neither that it has no other reasonable recourse to gather information than to have PacifiCorp shoulder the substantial burden that their motion requires nor that there are no contractual impediments to the company's compliance with their request.

The November 18, 2016 ALJ ruling is affirmed. The motion to compel PacifiCorp to respond to Coalition DR 1.4 is denied.

IV. ORDER

IT IS ORDERED that:

1. The ruling of the administrative law judge issued on November 2, 2016 granting in part and denying in part the Motion to Compel filed by the Community Renewable Energy Association against PacifiCorp, dba Pacific Power, is affirmed
2. The ruling of the administrative law judge issued on November 18, 2016 denying the Motion to Compel filed by the Renewable Energy Coalition against PacifiCorp, dba Pacific Power, is affirmed.


Made, entered, and effective MAR 23 2017.



Lisa D. Hardie
Chair



John Savage
Commissioner



Stephen M. Bloom
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.