

August 19, 2016

***VIA ELECTRONIC FILING***

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

Attn: Filing Center

**Re: UE 307—PacifiCorp's Objection to Noble Americas Energy Solutions' Request to Designate a Qualified Consultant**

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket its objection to Noble Americas Energy Solutions' Request to designate a qualified consultant.

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**

**UE 307**

In the Matter of  
PACIFICORP, dba PACIFIC POWER,  
2017 Transition Adjustment Mechanism.

PACIFICORP'S OBJECTION TO  
NOBLE SOLUTIONS REQUEST TO  
DESIGNATE KEVIN C. HIGGINS AS  
A QUALIFIED CONSULTANT  
UNDER ORDER NO. 16-231

1           Under Section 15 of the Modified Protective Order, Public Utility Commission of  
2 Oregon (Commission) Order No. 16-231, issued in the above-captioned docket, PacifiCorp  
3 d/b/a Pacific Power (PacifiCorp or Company) objects to Noble Americas Energy Solutions  
4 LLC (Noble Solutions) request to designate Kevin C. Higgins as a qualified consultant  
5 under the Modified Protective Order. Mr. Higgins has not relied on the requested  
6 information in his expert testimony and access is not required for Noble Solutions to protect  
7 its interests in the remainder of the proceeding.

8           Through discovery, Noble Solutions has requested information related to  
9 PacifiCorp's acquisition of renewable energy certificates (REC) through PacifiCorp's  
10 ongoing request for proposals (RFP) process. On August 12, 2016, Noble Solutions filed  
11 signatory pages under the Modified Protective Order for its legal counsel. Also on August  
12 12, 2016, Noble Solutions filed a request to designate Mr. Higgins as a qualified consultant  
13 under the Modified Protective Order. PacifiCorp objects to the designation of Mr. Higgins  
14 as a qualified consultant under the Modified Protective Order because Mr. Higgins and his  
15 consulting company, Energy Strategies, L.L.C. represent industrial customers, electricity  
16 service suppliers (ESS), and independent power producers. Those types of entities are

1 either competitors for the purchase of RECs or potential REC sellers that may be involved  
2 in future negotiations with PacifiCorp. Accordingly, disclosure of the protected information  
3 would put PacifiCorp and its customers at a significant commercial disadvantage.

4 The information sought by Noble Solutions is extremely sensitive for two reasons.  
5 First, PacifiCorp has not yet finalized all of the REC purchase agreements under the RFP.  
6 The ongoing nature of the RFP and continuing negotiations with counter-parties mandates  
7 the upmost confidentiality. Second, the REC market is extremely illiquid. In an illiquid  
8 market, disclosure of any market information will have dramatic effects on the market as a  
9 whole. PacifiCorp has REC compliance requirements and is seeking to obtain RECs at the  
10 least cost. PacifiCorp's ability to obtain RECs at the least costs directly benefits the  
11 Company's retail customers. Accordingly, any disclosure of the REC pricing information  
12 would have an immediate and potentially significant effect on PacifiCorp's ability to obtain  
13 RECs at the least cost for its customers.

14 Mr. Higgins' clients include ESSs that have a compliance obligation to procure  
15 RECs and, thus, are direct competitors of PacifiCorp in the REC market. Additionally, Mr.  
16 Higgins represents clients that include independent power producers, including renewable  
17 developers that would be sellers in the REC market. Disclosure of the requested  
18 information to Mr. Higgins' clients would either allow competitor buyers to slightly outbid  
19 PacifiCorp or REC sellers to determine the floor price for bids in future RFPs.

20 While Mr. Higgins has stated that he is not providing any consulting support to any  
21 party regarding PacifiCorp's ongoing RFP,<sup>1</sup> the information Noble Solutions wants Mr.  
22 Higgins to review would provide Noble Solutions and Mr. Higgins' other clients a

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<sup>1</sup> See Attachment A to this Objection.

1 significant commercial advantage at the expense of PacifiCorp and its customers if  
2 disclosed. During informal discussions to resolve the dispute, Mr. Higgins stated that he  
3 does not currently represent clients in REC sales negotiations, but also admitted that he does  
4 represent renewable energy developers in negotiating power purchase agreements. The  
5 negotiation of renewable energy power purchase agreements often include discussions of  
6 bundled RECs, and access to the requested information would place Mr. Higgins in an  
7 advantageous position to advise his clients of current market prices. The same would be  
8 true for Mr. Higgins' ESS clients. In an illiquid market, such information is extremely  
9 valuable and would result in a significant market advantage. Additionally, given the nature  
10 of the data requested, any inappropriate disclosure would be extremely difficult to detect,  
11 meaning that restrictions under the Modified Protective Order would be virtually impossible  
12 to enforce.

13           Moreover, access to the information is not necessary at this point in the proceeding.  
14 Noble Solutions has already filed Mr. Higgins' direct and rebuttal testimony. Mr. Higgins  
15 did not include specific pricing data in his expert testimony. Mr. Higgins' testimony simply  
16 argues that the value of freed up RECs should be passed on to customers choosing direct  
17 access – an argument previously rejected by the Commission<sup>2</sup> – and proposes that the REC  
18 pricing data be used as a proxy for the transition adjustment mechanism calculation. Mr.  
19 Higgins' argument is an argument based on principal, and the specific data was not included  
20 in his testimony. Indeed, Noble Solutions did not seek to qualify Mr. Higgins until the day  
21 intervenor rebuttal testimony was filed, indicating that Mr. Higgins did not need to analyze  
22 the requested information for his expert testimony. Accordingly, the pricing data will not be

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<sup>2</sup> Order No. 15-394 at 10-12.

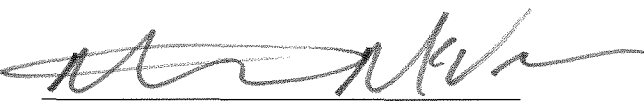
1 an issue for cross-examination of Mr. Higgins, and is not necessary for Mr. Higgins to  
2 adequately prepare for the hearing or assist counsel for Noble Solutions.

3 PacifiCorp is not objecting to Noble Solutions' counsel accessing the information  
4 and potential use of the information during the hearing. PacifiCorp is aware of the  
5 arguments and understands that the information may be used during cross examination of its  
6 witnesses. However, the information requested does not require expert analysis. Indeed, it  
7 is the simple nature of the information that is the basis for PacifiCorp's objection – a  
8 consultant for a competitor-buyer or REC seller would not be able to forget the pricing data  
9 when advising clients.

#### 10 CONCLUSION

11 Given the unreasonable commercial risk, and lack of prejudice to Noble Solutions  
12 interests in this proceeding, PacifiCorp respectfully requests that the Commission restrict  
13 access to information related to PacifiCorp's acquisition of RECs through PacifiCorp's  
14 ongoing RFP process to Noble Solutions' counsel and uphold PacifiCorp's objection to Mr.  
15 Higgins' access request.

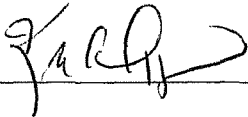
16 Respectfully submitted this 19<sup>th</sup> day of August 2016.

By:   
Matthew D. McVee  
Assistant General Counsel  
PacifiCorp d/b/a Pacific Power

**ATTACHMENT A**

III. Persons Seeking Qualification under Paragraph 14:

I have read the modified protective order, agree to be bound by the terms of the order, and provide the following information to seek access to certain specific information designated as Highly Confidential Information.

Signature:		Date:	8-12-16
Printed Name:	KEVIN C. HIGGINS		
Physical Address:	215 S. STATE ST., SUITE 200 SALT LAKE CITY, UT 84111		
Email Address:	Khiggins@energystrat.com		
Employer:	ENERGY STRATEGIES		
Associated Party:	NOBLE SOLUTIONS		
Job Title:	PRINCIPAL		
If not employee of party, description of practice and clients:	REGULATORY CONSULTING PRACTICE. CLIENTS ARE CHIEFLY COMMERCIAL & INDUSTRIAL CUSTOMERS, BUT ALSO INCLUDES EESS and INDEPENDENT POWER PRODUCERS. I AM NOT PROVIDING ANY CONSULTING SUPPORT TO ANY PARTY REGARDING THE PACIFICORP REC RFP.		

<p>I seek access to the following specific information designated as Highly Protected Information for the following reasons:</p>	<p>INFORMATION RELATED TO PACIFICORP'S REC RFP. PLEASE SEE ATTACHED LETTER IN SUPPORT.</p>
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