

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

LC 77

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2021 Integrated Resource Plan.

RULING

DISPOSITION: PACIFICORP'S OBJECTION DENIED

On December 23, 2021, PacifiCorp, dba Pacific Power (Pacific Power), filed an objection to NewSun Energy's request to access confidential information under the General Protective Order 21-271. NewSun Energy and Sierra Club filed responses. PacifiCorp filed a reply. In this ruling, we summarize the individuals at issue, the information at issue, the parties' arguments of potential harm, and the applicable standard. We rule that PacifiCorp's objection is denied.

I. INDIVIDUALS AT ISSUE

NewSun seeks to designate the following individuals as qualified persons eligible to access protected information in this proceeding: its Chief Executive Officer, Mr. Stephens; In-House Counsel, Policy & Regulatory Affairs, Ms. Barlow; executive assistant, Ms. Schauer; and its consultant, Ms. Andrus. PacifiCorp objects to the signatory pages for NewSun, stating that the individuals are either employees of a developer of energy resources or, in the case of Ms. Andrus, are a consultant representing a developer. NewSun maintains that all of its signatories need access to the data.

II. INFORMATION AT ISSUE

PacifiCorp states that its 2021 Integrated Resource Plan (IRP) has public and confidential workpapers, and the confidential workpapers are contained on a confidential data disk. NewSun asked for the data disk and for the location of certain information regarding the cost or value of capacity. PacifiCorp states there are 1,500 files on the disc. The information that PacifiCorp opposes sharing with developers includes: IRP inputs with project-specific prices, 8760 capacity factors and other operating characteristics, and IRP outputs that include cost

and volume for request for proposal (RFP) bids, non-qualifying facility power purchase agreements (PPAs), and PacifiCorp-owned assets. PacifiCorp states the information often occurs in multiple instances in each file.

PacifiCorp rejects the possibility of redacting or aggregating the information on the confidential data disc, stating the data disk could not be appropriately modified in a way to provide the data disc to a developer, such as NewSun using a modified protective order. PacifiCorp states that it could provide the necessary information in docket UM 2011 by the end of January 2022.¹ PacifiCorp anticipates that much of the data to be provided in docket UM 2011 will be non-confidential and available to all stakeholders. PacifiCorp states that commercially-sensitive details will be provided subject to the protective order in that docket.

III. PARTIES' ARGUMENTS OF POTENTIAL HARM

PacifiCorp states that in its RFPs bidders are responsible for indicating what information is confidential and that PacifiCorp represents that it will attempt to maintain the confidentiality of all bids submitted. PacifiCorp states that disclosure of the protected commercially sensitive information would violate the commitments it made to third-party developers in previous RFPs. NewSun and Sierra Club both respond with concerns that utilities over-designate data as confidential without any clear justification, which reinforces the inequitable power balance between utilities, stakeholders, and customers.² NewSun states that PacifiCorp is vague about whether any of the data at issue here is actually bidder data that PacifiCorp committed to protect.

PacifiCorp also argues that the commercially sensitive information would give NewSun an unfair advantage over other developers participating in PacifiCorp's current 2022AS RFP and future RFPs. PacifiCorp asserts that the information on price, capacity factors, other operating characteristics, cost, and volume of competitors' projects would give NewSun unfair access to competitors' project development information, potentially impacting their development efforts (i.e., land procurement and/or leasing). NewSun responds that denying the public access to the relevant data would give PacifiCorp a competitive advantage in preparing their benchmark or affiliate bids for its RFP.

NewSun asks the Commission to consider the broader consequences of suppressed or limited participation from stakeholders. NewSun states that IRPs are public processes, and potentially or actually affected stakeholders need to be able to review the information with sufficient ease to evaluate whether they should participate. NewSun argues that

¹ PacifiCorp's Objection to NewSun Energy's Designation of Qualified Persons (Dec. 23, 2021).

² Sierra Club's Response to PacifiCorp's Objection to NewSun's Designation of Qualified Persons (Jan. 5, 2022).

opaque processes with hidden or confidential information prevent stakeholders from evaluating the data to determine if there is an issue. NewSun states that the Commission benefits from robust participation and should ensure maximal access to data for all stakeholders.

NewSun states this is its first attempt to participate more formally and fully in an IRP. NewSun explains that, in other proceedings, it has been told that it should have participated in the IRP to get certain information, and that in UM 2011 PacifiCorp recommended that NewSun get access to data in the IRP docket. NewSun states that PacifiCorp should provide all the relevant data in UM 2011 so all parties to that docket can have access to the data. NewSun states the value of capacity is also an issue in this docket, and that it also needs access here in order to participate.

IV. PRECEDENT AND POTENTIAL STANDARDS

PacifiCorp states that developers do not traditionally receive access to confidential information in an IRP. PacifiCorp describes two of Portland General Electric's IRPs where a similar issue occurred. In one instance, the developer withdrew its signatory pages. In the other, PGE worked with a stakeholder to reach agreement on what information its consultant (who also worked with developers) could access. PacifiCorp notes that a pumped hydro developer has participated in its past IRPs and submitted comments without having access to confidential information.

NewSun explains how IRP Guideline 2 provides that the public should be allowed significant involvement in the IRP and the utility should make public any non-confidential information that is relevant to resource evaluation and the action plan.³ NewSun also describes how PGE has characterized its IRP as public, allowing staff from its IRP team to work on an affiliate bid, in contrast to PacifiCorp's approach. NewSun explains that PacifiCorp's benchmark team may be made up of individuals that work on the IRP and have access to the data. NewSun asserts that IRP data is public and all bidders should have equal access so that PacifiCorp does not have an unfair advantage.

PacifiCorp responds that the Commission has recognized the importance of protecting competitively sensitive market information not only in the IRP process, but relatedly, in the context of competitive resource procurement—the source of the commercially sensitive data at issue.⁴

³ NewSun's Response to PacifiCorp's Objection to Designation of Qualified Persons at 10-11 (Jan. 3, 2022).

⁴ PacifiCorp's Request for Leave to File Reply and Reply at 5 (Jan. 10, 2022). We rule that PacifiCorp's reply is allowed for good cause. The reply did not delay our resolution of this dispute or add any additional issues.

NewSun suggests that the Commission’s processes provide for at least some stakeholder and/or neutral party review of the relevant data in order to determine the appropriate level of public versus protected data. NewSun states that its interests in this proceeding are not represented by any other party, so no other party would object to the confidential designations that NewSun may object to if it reviewed the data.

V. RULING

We deny PacifiCorp’s objection to NewSun’s designation of qualified persons. When evaluating disputes under a protective order, we consider whether the party or person seeking to be qualified has a legitimate and non-competitive need to access the information for the purposes of participating in the proceeding in which the information was filed. We also consider the potential harm that could result from allowing access to the information in question. Here, we find PacifiCorp has not shown good cause under that standard to exclude NewSun from accessing protected information. PacifiCorp failed to substantiate its assertions that competitive harms would result from granting NewSun’s requested access. In addition, it did not provide any alternative or partial options for NewSun to access information in the IRP.

PacifiCorp’s primary concern with NewSun’s proposed GPO signatories is that, as a developer, NewSun should not have access to project-specific cost information on PacifiCorp’s IRP data disk. At issue is generators’ cost information submitted to PacifiCorp in docket UM 2059 last year. PacifiCorp also raises concerns with qualifying facilities (QF) PPA information, which presumably pre-dates 2021, because no new QFs have come online in PacifiCorp’s last two Transition Adjustment Mechanism (TAM) proceedings. We find that PacifiCorp has not shown generators’ cost information from past years has such significant commercial value that the information may not be shared under the protections of the GPO. Chapter 7 of PacifiCorp’s IRP describes changing prices for new renewable projects, indicating that past cost information is a useful input for the IRP, but not so sensitive as to create a competitive advantage to a GPO signatory.

We further reject the argument that release of generator cost information to a GPO signatory will impact RFP bids expected in docket UM 2193 in the first quarter of 2023. Using confidential IRP data for another proceeding, such as UM 2193, is prohibited by the protective order that states “any Qualified Person given access to Protected Information under this order may not disclose Protected Information for any purpose other than participating in these proceedings.”⁵ Accordingly, if NewSun proceeds with

⁵ Order No. 21-271, Appendix A at 3.

requesting the data disk, it may not use protected information from the IRP data disk for dockets UM 2193 and UM 2011, or any other proceeding.⁶ We also note that the public information in the IRP includes extensive detail on proxy resource cost assumptions in Tables 7.1 and 7.2, and encourage stakeholders to use the publicly-available information when it is sufficient for analysis and comments.

Lastly, we remind PacifiCorp that it is largely in control of how it treats its information. We are inclined to allow the utility to designate information it believes falls within ORCP 36(C)(1), so long as the utility provides a reasonable path for parties to sign a protective order and access the protected information. In addition, a utility can seek a modified protective order to carve out certain information that it believes requires increased protection (e.g., to the extent a utility can identify specific bidder information that it is obligated not to disclose) or to restrict certain individuals (e.g., competitive duty personnel) from accessing the information.⁷ PacifiCorp has not done so here.

Dated this 13th day of January 2022, at Salem, Oregon.



Katharine Mapes
Administrative Law Judge

⁶ See *In the Matter of Sierra Club Regarding Violation of Protective Order*, Docket No. UM 1707, Order No. 14-392 (Nov. 6, 2014). In that proceeding, the Commission considered maximum sanctions of \$160,000 and a bar on Sierra Club and its witnesses from participating in any future proceeding at the Commission, though it found them not to be warranted in that case.

⁷ *In the Matter of Rulemaking to Amend OAR 860-001-0080, Protective Orders*, Docket No. AR 628, Order No. 20-013 at 3 (Jan. 14, 2020).