

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1209

In the Matter of)
)
MIDAMERICAN ENERGY HOLDINGS)
COMPANY)
)
Application for Authorization to Acquire)
Pacific Power & Light, dba PacifiCorp.)

ORDER

DISPOSITION: MOTION TO CERTIFY GRANTED; MOTION
TO COMPEL DENIED, AS TO DATA REQUESTS
7, 12, and 13

On November 7, 2005, the Hoopa Valley Tribe (“Tribe”) moved to compel responses to data requests served on PacifiCorp and MidAmerican Energy Holdings Company (MEHC). The data requests sought information about PacifiCorp’s estimates related to the FERC proceeding to relicense the Klamath Hydroelectric Project. The motion was granted on November 17, 2005.

On November 23, 2005, MEHC and PacifiCorp requested certification of the ruling as it related to data requests 7, 12, and 13. Those data requests provide:

- 7. What is the maximum dollar amount that PacifiCorp estimates compliance with the FERC license will cost?
- 12. Provide copies of all written budgets, cost estimates, or reports relating to the estimated costs associated with the re-licensing of the Klamath Hydroelectric Project.
- 13. Provide copies of all written budgets, cost estimates, or reports relating to the estimated costs associated with compliance with environmental conditions, including fishway prescriptions, related to the FERC license.

MEHC and PacifiCorp argue that provision of this information will result in substantial detriment to the public interest and undue prejudice to PacifiCorp because it will drive up the cost of settlement in the FERC proceeding by revealing PacifiCorp’s analysis of issues central to negotiation and settlement in that case. The companies also argue that the shield of the protective order cannot effectively bar a party that knows PacifiCorp’s bottom line from using that information in subsequent negotiations.

The Tribe responded that it is willing to narrow its requests in items 12 and 13 to “only produce the reports and backup documentation that support the cost estimate previously disclosed.” *See* Tribe Response, 1-2 (Nov 29, 2005). As to data request 7, the Tribe suggested a compromise, that PacifiCorp’s responses “need only be filed under seal with the Commission, with copies provided to ALJ Smith and MEHC, and not to the Tribe or other parties to the FERC relicensing proceeding.” *See id.* at 2 (footnote omitted).

OAR 860-014-0091(1)(a) provides that an Administrative Law Judge (ALJ) may certify a question to the Commission after finding that the ruling “may result in substantial detriment to the public interest or undue prejudice to any party.” The initial ruling on the motion to compel recognized the heightened sensitivity of the data by recommending that it could be provided under the protective order to bar use in other proceedings. *See* ALJ ruling, 2 (Nov 17, 2005). We continue to be mindful of the sensitivity of the data and reconsider PacifiCorp’s narrowed concerns regarding data requests 7, 12, and 13.

First, we consider the parties’ positions related to data request 7. Data requests and their responses are served on parties, but not the Commission nor the ALJ. *See* OAR 860-014-0070(3). The information may be submitted if relevant to a motion to compel, or if it is introduced as evidence. *See id.* at (4), (5). Evidence is offered in the form of testimony and exhibits. *See* OAR 860-014-0060. If the data responses will only be provided to the Commission and ALJ, and not the parties, the data will not be able to be introduced as evidence in the record, and the Tribe will only be able to make blind arguments based on the data. We will not compel production of data which will serve no role in the proceeding. The Tribe’s motion to compel is denied as to data request 7.

Second, we consider the parties’ positions related to data requests 12 and 13. PacifiCorp argues that it provided its cost estimate to the Tribe and that is sufficient for the Tribe’s arguments about whether MEHC can financially handle the costs of the Klamath relicensing proceeding. *See* MEHC/PacifiCorp Request for Certification 4-5 (Nov 23, 2005). The Tribe argues that the low-cost estimate provided by PacifiCorp is substantially higher than one study’s estimate for removal of four dams, and that further documentation is needed to show how PacifiCorp estimated its costs. *See* Tribe Response, 4 (Nov 29, 2005). In the issues list, the stated issue relevant to this transaction is the impact of the acquisition on the “Acknowledgement and ability to pay possible liabilities pursuant to FERC relicensing of hydroelectric projects owned by PacifiCorp.” PacifiCorp has apparently provided an estimate of the costs, but the Tribe wishes to dispute the components of those estimates, particularly those it believes are too high. The Tribe’s arguments expand the scope of this proceeding beyond the issues list, and the Tribe’s motion to compel is denied as to data requests 12 and 13.

We also note that the Tribe has stated that, although PacifiCorp and MEHC declined to request certification of the ruling to compel production of documents related to the other data requests, the Tribe has not yet seen those documents. *See* Tribe Response, 1 n 1 (Nov 29, 2005). The companies are reminded to produce those documents in a timely manner.

ORDER

IT IS ORDERED that:

- 1. The request to certify the November 17, 2005, ruling on the Hoopa Valley Tribe's Motion to Compel is granted; and
- 2. The Tribe's Motion to Compel is denied as to its Data Requests 7, 12, and 13.

DEC 12 2005

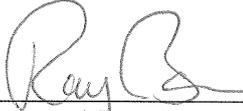
Made, entered, and effective _____.



Lee Beyer
 Chairman



John Savage
 Commissioner



Ray Baum
 Commissioner



A party may request rehearing or reconsideration of this order pursuant to 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 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.