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September 30, 2014

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Public Utility Commission of Oregon
3930 Fairview Industrial Dr. S.E.
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Attn: Filing Center

**RE: Docket UM 1707 / Docket LC 57—PacifiCorp's Response to Motion to Consolidate
and Request for Oral Argument**

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) encloses for filing an original and one copy of the Company's response to Sierra Club's motion to consolidate and request for oral argument filed in dockets UM 1707 and LC 57.

If you have questions about this filing, please contact Natasha Siores, Director, Regulatory Affairs & Revenue Requirement, at (503) 813-6583.

Sincerely,



R. Bryce Dalley
Vice President, Regulation

Enclosure

cc: Service List—UM 1707
Service List—LC 57

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1707 & LC 57**

In the Matters of

SIERRA CLUB.

Regarding Violation of Protective
Order No. 13-095 (UM 1707)

and

PACIFICORP d/b/a PACIFIC POWER.

2013 Integrated Resource Plan. (LC 57)

PACIFICORP'S RESPONSE TO
MOTION TO CONSOLIDATE AND
REQUEST FOR ORAL ARGUMENT

1 On September 24, 2014, Sierra Club filed a motion to consolidate its challenge to
2 PacifiCorp's confidentiality designation in docket LC 57 with docket UM 1707, which is the
3 show cause proceeding initiated by the Public Utility Commission of Oregon (Commission)
4 regarding Sierra Club's breach of the Commission's standard protective order. Sierra Club
5 also requested oral argument before the Commission on its motion challenging PacifiCorp's
6 confidentiality designation. PacifiCorp d/b/a Pacific Power (PacifiCorp) files this response
7 to Sierra Club's motions in compliance with the administrative law judges' ruling adopting a
8 procedural schedule.¹ The Commission should uphold Chief Administrative Law Judge
9 Michael Grant's previous rulings separating the investigation into the breach from the motion
10 challenging the confidentiality designation.

11 Sierra Club claims consolidation is appropriate because the motion challenging
12 PacifiCorp's confidentiality designation is linked to the Commission's investigation of Sierra
13 Club's breach. The Chief ALJ, however, has repeatedly made it clear that the challenge to
14 the confidentiality designation in LC 57 and the investigation of the breach in UM 1707 are

¹ Judge Grant and Judge Pines's Ruling Adopting Procedural Schedule, issued in both dockets September 25, 2014.

1 “separate and distinct.”² During the conference on August 18, 2014, initiating the show
2 cause proceeding, the Chief ALJ stated: “To the extent that Sierra Club wants to challenge
3 [PacifiCorp’s] designations, we can address that, but only separately. We’re not going to be
4 talking about the proper designation of any material here today or in this process.”³

5 As the Chief ALJ reaffirmed during a prehearing conference held September 29,
6 2014, docket UM 1707 is a Commission-initiated show cause proceeding, not a dispute
7 between PacifiCorp and Sierra Club. Sierra Club was ordered to show cause why an order
8 finding a violation of the protective order and imposing sanctions should not be issued.⁴
9 Sierra Club bears the burden in UM 1707 to prove that a violation did not occur. In contrast,
10 the motion challenging the confidential designation in docket LC 57 *is* a dispute between
11 Sierra Club and PacifiCorp, where PacifiCorp bears the burden of defending its designations
12 under the applicable law. Sierra Club’s challenge to PacifiCorp’s confidentiality designation
13 is not typically the type of proceeding that requires oral argument before the Commission,⁵
14 and given the Chief ALJ’s statements about the scope of docket UM 1707, granting Sierra
15 Club’s motions could complicate oral argument regarding the breach.

² See Chief ALJ Grant’s E-mail to PacifiCorp and Sierra Club Memorializing Decisions Made at 8/18/14 Telephone Conference at 1, 2 (docketed in UM 1707 on August 18, 2014).

³ Attachment A (Informal Transcript of August 18, 2014 Conference) at 2. This informal transcript was prepared based on an audio file of the conference provided to PacifiCorp’s counsel by the Commission at PacifiCorp’s request.

⁴ *Id.* (“Instead I want to use a show cause type of proceeding to address this matter. As noted, the Wyoming data request shows that Sierra Club used information designated as confidential under LC 57 for purposes other than that proceeding. So I’m going to direct Sierra Club to justify and explain its actions and to show cause why the Commission should not impose sanctions against Sierra Club for the violation of the protective order.”)

⁵ Oral argument before the Commission is typically permitted in “major proceedings” upon request of a party. OAR 860-001-0660(3)-(4). A “major proceeding” is one “that has or is expected to have a full procedural schedule with written testimony or written comments” and has a “substantial impact on utility rates or service quality” or a utility’s operations. OAR 860-001-0660(1). In the alternative, a party may file a motion requesting classification as a “major proceeding” if the case “is likely to result in a significant change in regulatory policy” or “raises novel questions of fact or law.” OAR 860-001-0660(2).

1 In short, the Chief ALJ already decided the primary issue raised in Sierra Club's
2 motion to consolidate by finding that the two matters are not appropriately considered
3 together. PacifiCorp supports the Chief ALJ's previous rulings.

4 Respectfully submitted this 30th day of September, 2014.

By:  /PBD
Sarah K. Wallace
Assistant General Counsel
PacifiCorp d/b/a Pacific Power

Lisa D. Hardie
Troutman Sanders

Attorneys for PacifiCorp d/b/a Pacific Power

ATTACHMENT A

Informal Transcript of
August 18, 2014 Conference

DOCKET LC 57/UM 1707
AUGUST 18, 2014
TRANSCRIPT OF CONFERENCE RE:
PROTECTIVE ORDER BREACH

ADMINISTRATIVE LAW JUDGE (MICHAEL GRANT):

Here on the record, my name is Michael Grant, Chief Administrative Law judge, here in the matter of LC 57 related matter. Appearing today for Sierra Club is Gloria Smith, representing Pacific Power is Sarah Wallace. I'm here today to [Garbled] the Sierra Club's actions in conducting discovery in PacifiCorp's rate proceeding in Wyoming. PacifiCorp contends that Sierra Club violated the terms of our protective order by serving data requests in that docket that disclosed confidential information obtained during a workshop with this Commission. In response, Sierra Club acknowledged that the data requests in the Wyoming case made direct reference to the confidential presentation here in Oregon, but contends that reference to the existence of a handout was already a matter of public record, and so Sierra Club has asked for the appointment of an ALJ to help resolve the matter. So the purpose of the call today is to kind of discuss the process the Commission will use to address this matter.

Before we talk about that I want to kind of address and clarify three things. First of all, I just want to make sure the parties are aware that the Commission takes any violation of a protective order very seriously. The access and use of confidential information owned by the utilities is essential for the Commission in order to do its job. We need to access and evaluate utility information. Utilities' [GARBLED] Commission has for many years used protective orders to help protect sensitive information while also allowing parties to access it for Commission proceedings. Unfortunately, we have had past violations of these agreements, which obviously harmed the utilities' confidence that the sensitive information that's protected can lead the utilities to being reluctant to provide the essential information that we need for fear that the leaks could harm the company and its ratepayers. In the past, in response to the leaks, we've had to, been required to adopt more stringent protective orders which provide more protection but comes at a cost of the intervenor's ability to participate in the PUC proceedings. So to find out how seriously the Commission views the protective order violations and help deter these violations, the Commission has adopted rules stating that sanctions for such conduct. Commission rule 860-001-0080 sub 4 talks about those sanctions. So the Commission may expel from the subject proceeding any person who fails to comply with the terms of a protective order, prohibit the person from appearing in future proceedings, and impose penalties under ORS 756.990. That statute provides [Garbled] penalties for \$10,000 for each violation of a Commission order. The rule also provides that if an attorney violates a protective order, the Commission will report the violation to the Bar associations in all states where the attorney is admitted to practice law. So obviously a very serious issue were dealing with here.

Second, I wanted to talk briefly about Sierra Club's request that the PUC appoint an ALJ under paragraph 15 of the protective order. That paragraph is titled "Appeal to the Presiding Officer." I wanted to clarify that that paragraph is intended to help parties resolve disputes about whether information has been properly designated as confidential. In other words, if a party believes that another party has improperly designated information as confidential, paragraph 15 provides the means for an ALJ to examine a designation and determine whether or not it was properly made. That paragraph does not apply to the situation here where the question is not whether the information was properly designated, but whether the designated information was used for unauthorized purposes. To my knowledge, Sierra Club made no effort to challenge whether or not the information contained in the confidential handout was properly designated prior to issuing a data request. To the extent that Sierra Club wants to challenge those designations, we can address that, but only separately. We're not going to be talking about the proper designation of any material here today or in this process.

Third, and perhaps most importantly, although Sierra Club will be able to explain and defend its actions, the Wyoming data requests as prima facie evidence that a violation of the protective order occurred. Paragraph 12 of the protective order says "without the written permission of the designating party, any person given access to confidential information under this order may not use or disclose confidential information for any purpose other than participating in these proceedings." The express reference to the confidential presentation in this Wyoming data request shows that Sierra Club used the confidential information for purposes other than the LC 57 proceeding in Oregon. Although Sierra Club appears to argue that they did not disclose any confidential information, this data request shows that it did improperly use the handout in the Wyoming case in violation of our protective order.

So with those points clarified, let's turn to the process going forward. We're not going to be discussing the details of the Wyoming data requests or the confidential presentation today. Instead I want to use a show cause type of proceeding to address this matter. As noted, the Wyoming data request shows that Sierra Club used information designated as confidential under LC 57 for purposes other than that proceeding. So I'm going to direct Sierra Club to justify and explain its actions and to show cause why the Commission should not impose sanctions against Sierra Club for the violation of the protective order. PacifiCorp can then respond to Sierra Club's filing and may propose what sanctions it would like the Commission to impose. Then Sierra Club will be able to file a reply to PacifiCorp's response before the Commission makes the final determination in this case. And we can talk about dates for filing but does anyone have any questions at this point?

SIERRA CLUB (GLORIA SMITH): I have a question.

ALJ: Yes?

PACIFICORP (SARAH WALLACE): No questions.

SIERRA CLUB: Are you prepared for Sierra Club to go forward?

ALJ: Not today. I want Sierra Club to file a response. So I think that maybe Sierra Club could file its initial filing on Wednesday, August 27th, PacifiCorp file its response Friday, September 5th, and then Sierra Club could file its reply on Friday, September 12th. Are those dates acceptable to the parties?

SIERRA CLUB: Just one moment. Let me take a look here. I'm pretty sure that's fine. Yes.

PACIFICORP: Your honor, PacifiCorp really prefers to move more quickly than that if possible. We still have ongoing workshops and requirements that came out of the order in LC 57 that have to occur pretty quickly and we'd like a resolution of this as quickly as possible. And in addition, just to clarify, my assumption is, you know, because the protective order applies to both the written presentation and with the discussion during the workshop on August 6, that Sierra Club will be required to show how it didn't improperly disclose information that was discussed at that workshop.

ALJ: Correct.

PACIFICORP: Is that correct?

ALJ: Correct.

PACIFICORP: Thank you.

SIERRA CLUB: And Sierra Club actually has a... we are amiable to a more expedited schedule as well. Settlement discussions were actually were scheduled for tomorrow in the Wyoming rate case so things are moving very rapidly there, so we're certainly amiable to a quicker schedule. And I'd like to clarify, as well, I mean, the allegation here is, we violated the protective order by disclosing trade secrets and commercially protected information, and then also, I think that this also turns around the definition of the word "use" and how we used it. Sierra Club would like to have the opportunity to brief that matter as well.

ALJ: Yeah.

SIERRA CLUB: Does that...?

ALJ: Yeah.

SIERRA CLUB: OK.

ALJ: Yeah, in your filing you'll be able to kind of explain and defend your actions and explain why you do not believe that it either constituted violation of the protective order or it does not constitute use as the order intends.

PACIFICORP: My understanding is that they cannot contest whether or not it was properly deemed confidential and, therefore, trade secret or commercial information under the protective order. Is that correct?

ALJ: Correct. Yeah, the question about what we're looking at right now is whether or not Sierra Club used or disclosed information that was designated as confidential. The question about whether or not the designated information actually constituted a trade secret or was otherwise protected under the Oregon rules of civil procedure, that's a separate matter.

SIERRA CLUB: Yes, we have no intention of challenging whether any of the facts and figures etc. that were inside the confidential handout were properly designated. That's not an issue here.

ALJ: OK.

PACIFICORP: But the discussions during the workshop were also confidential and those were revealed in the data request. And that also needs to be explained.

SIERRA CLUB: This is Gloria Smith, we are not challenging that, you know, confidential facts and figures etc. were discussed, and we look forward to the company showing exactly in these data requests where it is we disclosed confidential data.

PACIFICORP: All of the information was confidential, but again, we're not supposed to be getting into the substance of this right now.

ALJ: Right, yeah, I mean, I think it's fairly clear that PacifiCorp's position is that all the, not only is the information in the handout, but all the information discussed at the workshop, was designated as confidential, and so Sierra Club will kind of clarify its actions here with that understanding and then PacifiCorp will be able to respond to that filing.

SIERRA CLUB: Understood.

ALJ: Ms. Smith, how soon do you think you'll be able to file, make your filing?

SIERRA CLUB: I'm looking at my calendar now, today's the 18th ...

ALJ: By the end of the week?

SIERRA CLUB: How about, yes. Honestly, I will try to prepare, I mean, I'm busy tomorrow and Wednesday but I will do my darndest to have this filed by the close of business on Thursday.

ALJ: OK.

SIERRA CLUB: Which is the 21st.

ALJ: 21st, correct. So, Ms. Wallace, how much time would you want to have to respond?

PACIFICORP: Wednesday the 27th. Does that work?

ALJ: OK.

SIERRA CLUB: Just one moment. One, two, three... So, if I have three business days, the company, I have three business days roughly, the company should have the same amount of time, not more.

PACIFICORP: That's fine.

ALJ: 26th?

SIERRA CLUB: So Tuesday.

ALJ: Tuesday.

PACIFICORP: That's fine.

ALJ: OK. And then, Ms. Smith, you'd be able to file a reply by that Friday, the 29th?

SIERRA CLUB: Yes, absolutely.

ALJ: OK. OK, I won't be issuing a memo or anything, but I'll go on the basis so were all understanding here. Sierra Club will make its initial filing by close of business Thursday, the 21st, PacifiCorp will file its response close of business Tuesday, August 26, and then Sierra Club will file its reply close of business Friday, August 29. Any questions?

PACIFICORP: I was just wondering if you have an idea of when we might expect a Commission decision?

ALJ: I don't know. I know we have Commissioner scheduling issues here in the early part of September, but I'll just make the commitment to get this addressed as soon as possible.

PACIFICORP: Thank you, your honor.

ALJ: Anything else?

SIERRA CLUB: Nothing from Sierra Club.

ALJ: OK. Thank you very much. We're adjourned.

SIERRA CLUB: Thank you, your honor, appreciate your time.

PACIFICORP: Thank you, your honor.

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of PacifiCorp's Response to Motion to Consolidate and Request for Oral Argument on the parties listed below via electronic mail and/or Overnight Delivery in compliance with OAR 860-001-0180.

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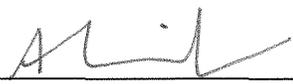
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Dated this 30th day of September, 2014.



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Dated this 30th of September, 2014.



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