



April 27, 2021

Via electronic mail

Public Utility Commission of Oregon
Attention: Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

Re: LC 62 and LC 67—Sierra Club Comments on PacifiCorp’s April 12, 2021 Written Report on DSM IRP Acquisition Goals, Environmental Compliance and Transmission Investments - 2020 Second Update

Sierra Club submits the following comments on PacifiCorp’s *Written Report on DSM IRP Acquisition Goals, Environmental Compliance and Transmission Investments – 2020 Second Update*. While Sierra Club recognizes that the 2020 Second Update is limited to events occurring between July 1 and December 31, 2020, these subsequent events, many occurring in January 2021, materially alter the current status of several updates, provide important context, or both. Accordingly, Sierra Club provides the following comments in order to ensure that the Commission is fully informed.

Slides 8-11: Affordable Clean Energy Rule

PacifiCorp’s slides on the Clean Power Plan and Affordable Clean Energy Rule fail to acknowledge that on January 19, 2021 the U.S. Court of Appeals for the District of Columbia vacated the Affordable Clean Energy rule in its entirety and remanded the rule back to the Environmental Protection Agency (“EPA”) for further consideration.¹ The EPA has not yet announced a replacement for the Affordable Clean Energy rule, but the Biden administration has been unequivocal in its commitment to aggressively curb GHG emissions. For example, President Biden has pledged to achieve a carbon-free power sector by 2035² and has made clear he will utilize the full capacity of the executive agencies, including the EPA, to achieve this goal.

¹ *Am. Lung Ass’n v. EPA*, 985 F.3d 914, 995 (D.C. Cir. 2021).

² *Fact Sheet: President Biden Takes Executive Actions to Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity Across Federal Government*, The White House (Jan. 27, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/>.

Slides 13-14: Utah Regional Haze

The EPA published a final Utah State Implementation Plan (“SIP”) rule on November 27, 2020. On January 21, 2021, Sierra Club, National Parks Conservation Association, HEAL Utah, and Utah Physicians for a Healthy Environment filed a Petition for Reconsideration with the EPA, requesting that the agency withdraw the final rule—published after the 2020 presidential election by the lame-duck Trump administration—and reinstate the agency’s 2016 Federal Implementation Plan (“FIP”) that required installation of selective catalytic reduction (“SCR”) retrofits at the Hunter and Huntington coal plants in order to reduce regional haze pollutants at some of the nation’s most iconic national parks, including Grand Canyon, Zion, Arches, Capitol Reef, and Canyonlands National Parks.³ The 2016 FIP, which was finalized in June 2016 and represented the culmination of nearly two decades of prolonged study, public process, and litigation, is the most accurate application of the Best Available Retrofit Technology requirement in Round 1 of the Regional Haze Rule and is likely to be reinstated as a result of minimal scientific scrutiny contained in the November 2020 Utah SIP.

Additionally, the same coalition of environmental organizations filed an appeal before the U.S. Circuit Court for the Tenth Circuit, seeking review of the November 2020 Utah SIP.⁴ On February 4, 2021, the EPA filed an Unopposed Motion for Abeyance in the Tenth Circuit, requesting that the court hold the matter in abeyance for 120 days to provide the agency with an opportunity to review the November 2020 Utah SIP “in conformance with the President’s Executive Order ‘Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis[.]’”⁵ The EPA’s motion was subsequently granted and a status report is due to the court on June 4, 2021.⁶ Sierra Club is confident the Trump administration’s politically motivated, lame-duck rule will be withdrawn.

Slides 16-18: Wyoming Regional Haze

The Wyodak settlement agreement was signed by Wyoming and the Company on December 16, 2020 and was published in the Federal Register on January 4, 2020.⁷ On March 3, 2021, Sierra Club, National Parks Conservation Association, Powder River Basin Resource Council, and Wyoming Outdoor Council submitted comments on the proposed settlement, opposing the elimination of pollution-reduction requirements that the EPA previously ordered for the Wyodak

³ *In Re: Approval and Promulgation of Air Quality Implementation Plans; Utah; Regional Haze State and Federal Implementation Plans*, 85 Fed. Reg. 75,860, U.S. Env’tl. Prot. Agency (Jan. 21, 2021).

⁴ *HEAL Utah v. EPA*, No. 21-9509, petition filed (10th Cir. Jan. 19, 2021).

⁵ EPA’s Unopposed Motion for Abeyance, *HEAL Utah v. EPA.*, No. 21-9509, (10th Cir. Feb. 4, 2021).

⁶ Order Granting the EPA’s Unopposed Motion for Abeyance, *HEAL Utah v. EPA*, No. 21-9509 (10th Cir. Feb. 4, 2021).

⁷ Proposed Settlement Agreement, Challenge to Clean Air Act, 86 Fed. Reg. 87 (Jan. 4, 2021).

coal plant and urging the EPA to withdraw from the proposed settlement. Sierra Club is confident EPA will again require pollution controls at Wyodak.

Regarding the Jim Bridger plant, the Company has proposed a “Reasonable Progress Reassessment” that would remove requirements to install SCR equipment on Units 1 and 2. This would require a revision to the Wyoming Regional Haze SIP, including EPA approval. On Slide 18, PacifiCorp wrongly states that the SIP revision has been “approved,” but must be published in the Federal Register and subject to public comment. Approval is not possible prior to publication in the Federal Register and opportunity for public comment. Notably, the EPA has yet to publish the SIP revision. There is every likelihood EPA will not rescind the SCR requirements at Bridger 1 and 2.

Slide 24: Coal Combustion Residuals

Slide 24 indicates that in July 2019, Wyoming “proposed adoption of a state CCR law, which now awaits legislative approval in 2021.” There has not been any legislative activity in Wyoming on CCR regulations; however, there has been some minor rulemaking related to state of Wyoming requirements for coal ash landfills. Regardless, federal regulations are paramount for CCR, and the new EPA will be an active regulator of CCR landfills and waste ponds.

Slide 29: Clean Water Act—Effluent Limitation Guidelines (“ELG”)

In November 2019, the EPA proposed revisions to the bottom ash and scrubber sections of the ELG rule. The Company submitted comments on January 2020. Subsequently, on August 13, 2020, the EPA approved the revisions to the ELG rule. A large coalition of environmental organizations, including the Sierra Club, have appealed that approval in the U.S. Court of Appeals for the District of Columbia.⁸ A similar lawsuit has also been filed in the Fourth Circuit Court of Appeals.⁹ Both cases remain pending, and EPA is unlikely to defend Trump’s 2020 rule revision

Respectfully submitted,

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⁸ *Clean Water Action v. Wheeler*, No. 20-1436, *petition filed* (D.C. Cir. Nov. 2, 2020).

⁹ *Appalachian Voices v. EPA*, No. 20-2187, *petition filed* (4th Cir. Nov. 2, 2020).