

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

LC 67/ LC 70

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER's)	RENEWABLE ENERGY COALITION'S
)	RESPONSE TO SIERRA CLUB'S
2017 Integrated Resource Plan.)	APPEAL OF ADMINISTRATIVE LAW
)	JUDGE'S AUGUST 7, 2018 RULING RE
)	PROTECTIVE ORDER
)	
)	
_____)	

I. INTRODUCTION

Pursuant to OAR 860-001-0720, the Renewable Energy Coalition (the "Coalition") submits this response to the Sierra Club's Appeal of the Administrative Law Judge's August 7, 2018 Ruling, regarding designations of confidentiality by PacifiCorp.

The Coalition supports the Sierra Club's position that the Administrative Law Judge should closely scrutinize parties' designation of information as protected, and that where a party designating information as protected has failed to adequately articulate the factual and legal basis for doing so, the information must be allowed to be public. Specifically, the Coalition recommends that the Commission direct PacifiCorp to publicly disclose the information shielded by each of the contested redactions in the June 28, 2018 PowerPoint presentation. Failure to uphold the Commission's past standards and to allow PacifiCorp to withhold non-confidential information will harm stakeholders, such as the Coalition, that rely on the ability of their members and principals to freely review information provided in Commission proceedings in order to determine how their interests are affected, and how they should expend their limited resources in a Commission proceeding.

The Coalition draws attention to the conclusion in the Administrative Law Judge’s Ruling that restriction of access to information does not harm or impair the stakeholders (including the Coalition’s) representation of its interests before the Commission. Confidentiality restrictions, especially of a broad nature as in the Ruling in this case, significantly harm the Coalition’s ability to participate in this and other regulatory proceedings. When information is truly confidential, the Coalition strongly supports its protection; however, the Administrative Law Judge and the Commission should recognize the difficulties placed on parties like the Coalition when it restricts access to information to only those entities willing to sign the protective order and to be bound by its (generally appropriate) rigorous and burdensome restrictions.

II. COMMENTS

Under the Commission’s protective order, parties are only allowed to protect information from public disclosure if they can articulate the “factual and legal basis of how the challenged information is protected.”¹ In making such a showing, “[b]road allegations unsubstantiated by specific facts are not sufficient.”² The protective order also requires parties to designate as protected only the portions of materials that are actually covered by ORCP 36(C)(7).³

These limitations on a party’s ability to designate information as protected serve an important purpose. They ensure that other parties are able to freely access all information relevant to their participation, except in the limited circumstances where protection is absolutely

¹ Re PacifiCorp, , dba Pacific Power, 2017 Integrated Resource Plan, Docket No. LC 67, Order 16-461 Appendix A at 2 (Dec. 5, 2016).

² Id.

³ Id. at Appendix A at 1.

necessary. In those limited circumstances, the additional burden of treating the information in accordance with the protective order is justified.

In allowing information to be protected, the Administrative Law Judge concluded:

I emphasize that maintaining the protected status of this information does not impair Sierra Club or other stakeholders in its representation before the Commission. Although I have concluded that the designated information should continue to be treated as protected under the GPO and not publicly disclosed, my ruling does not restrict the ability of signatories to the GPO, including Sierra Club and others qualified persons, to access the information for its use in presenting evidence and argument in this docket before the Commission.⁴

The Coalition strongly disagrees, and wishes to use this pleading as an opportunity to provide a more complete understanding of how the designation of material as confidential significantly impairs the Coalition and other similarly situated parties' ability to participate in proceedings. The Commission should be aware that the designation of information as protected does more than simply place a burden on a party by requiring the application of the procedures in the protective order. It also limits a party's ability to ascertain how the proceeding affects its interests, harms its ability to determine its position on the issues in the proceeding, and hinders its ability to clearly determine whether and how it should expend the resources required to engage in the Commission's process.

In the case of the Coalition, these limitations on reviewing information are significant, and can cause real substantive harm. The Coalition's members include more than thirty entities that own and operate approximately fifty renewable energy generation facilities in Oregon, Idaho, Montana, Washington, Utah, and Wyoming. These members include irrigation districts, water districts, corporations, cooperatives, and individuals. Many of them are not familiar with

⁴ Re PacifiCorp, dba Pacific Power, 2017 Integrated Resource Plan and 2019 Integrated Resource Plan, Docket No. LC 67/LC 70, Ruling at 5 (Aug. 7, 2018).

the regulatory process, do not have legal counsel familiar with Commission protective orders, and are not willing to execute protective orders, which can even be difficult for the utilities to appropriately follow⁵ and have significant penalties for non-utility parties that fail to comply.⁶

It is the Coalition's normal practice to not have its individual members, its Executive Director, or its integrated resource plan consultant sign protective orders or review confidential information because of this diverse membership, the high number of individual members, the lack of sophistication of many members with respect to OPUC processes, the limitations on individual resources, and the seriousness of the requirements to maintain confidentiality of protected information. Instead, the Coalition generally relies on the public nature of the Commission's proceedings, and its attorneys' review of protected information where necessary, to monitor and participate in proceedings to protect its members' interests as a whole. When materials are designated as protected, the Coalition's ability to freely discuss those materials with its members and principals is therefore significantly hampered. And in some instances, it cannot effectively happen at all.

Although the Coalition recognizes that it has the right to challenge utility confidentiality designations, and has done so in the past, this process is expensive, time consuming, difficult, and is not an effective way for its limited resources to be used. The Coalition therefore agrees with the Sierra Club's position that the Commission should clarify that "each designation [of protected information] must be supported by specific, well-established facts and sound legal

⁵ Re Portland General Electric Company, 2018 Request for Proposals for Renewable Resources, Docket No. UM 1934, ALJ Ruling (Oct. 3, 2018).

⁶ Re Sierra Club, Regarding Violation of Protective Order No. 13-095, Docket No. UM 1707, Order 14-392 (Nov. 6, 2014).

reasoning.”⁷ Absent this, utilities or other parties can use the Commission’s protective order to unnecessarily and inappropriately limit the ability of others to fully participate in Commission proceedings. A strict enforcement of the Commission’s rules is also necessary in order to ensure that the designation of material as protected cannot be used to arbitrarily shield information from public review, simply because a party does not want the public to know about it. Either of these abuses is counter to the Commission’s mission to conduct open and fair processes,⁸ would harm parties, and should be carefully guarded against.

In this case, PacifiCorp has designated information regarding its PVRR analysis as a protected trade secret, and yet provided only broad allegations of hypothetical harm. The Coalition agrees with the Sierra Club that this is insufficient, and fails to meet the requirements that PacifiCorp show that disclosure would result in a “clearly defined and serious injury.”⁹ In light of the harm this designation causes to parties, as described above, the Commission should find that the information should be made public.

III. CONCLUSION

For the reasons described above, the Coalition supports the Sierra Club’s position that the Commission should closely scrutinize designations of information as protected, and find that PacifiCorp has not appropriately done so in this case.

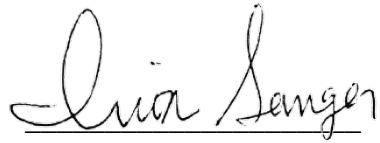
⁷ Docket No. LC 67, Sierra Club’s Appeal of Administrative Law Judge August 7, 2018 Ruling Re Protective Order at 6 (Sept. 28, 2018).

⁸ The Commission’s mission is to “Ensure Oregon utility customers have access to safe, reliable and high quality utility services at just and reasonable rates. This is done through robust and thorough analysis and independent decision-making conducted in an open and fair process.” https://www.puc.state.or.us/Pages/about_us.aspx

⁹ Docket No. LC 67, Sierra Club’s Appeal of Administrative Law Judge August 7, 2018 Ruling Re Protective Order at 6 (Sept. 28, 2018).

Dated this 5th day of October, 2018.

Respectfully submitted,

A handwritten signature in black ink that reads "Irion Sanger". The signature is written in a cursive style with a horizontal line underneath the name.

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Of Attorneys for the Renewable
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