BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

LC 67 (LC 70)

In the Matter of PACIFICORP, dba PACIFIC POWER, Unit-by-Unit Coal Study	SIERRA CLUB'S **REPLY** TO PACIFICORP'S RESPONSE TO SIERRA CLUB'S OBJECTIONS TO CONFIDENTIAL DESIGNATIONS

For this Commission to grant PacifiCorp's request to keep the results of the June 28, 2018 PowerPoint presentation secret, you must accept two opposing ideas at the same time: first, the PowerPoint's depicted study results are so detailed and precise,[1] were agencies, other market participants or future contractors[2] to view the designated material, cascading harmful effects could cause widespread rate increases;[3] and second, the designated material is so rudimentary and preliminary, the public cannot be trusted to understand or use it responsibly.[4] Both of these arguments cannot be true. In fact, neither is.

As shown below, PacifiCorp's compliance filing generally fulfilled the Commission's action items 5a -5h in the Commission's final order No. 18-138. The PowerPoint provided a top-line overview of the economic health of the company's coal units in order to start a public conversation on the future of its resource mix. However, the designated information provides only the summary results – not the inputs – of what is a 20-year modeling analysis, and PacifiCorp included enough explicit caveats that no competitor or contractor could reasonably gain a business advantage over PacifiCorp based on the nine-page PowerPoint presentation.

[1] PacifiCorp's Response to Sierra Club's Objections to PacifiCorp's Confidential Designations ("Response") at pp. 8 and 3 (July 16, 2018) ("PacifiCorp has expended significant resources to develop the modeling techniques and input assumptions underlying the PVRR(d) inputs and results."), and ("The redacted information is limited to PVRR(d) results for each unit and the commercially sensitive cost information used to develop the PVRR(d) results.") (footnotes omitted).
[2] Response at p.7.
[3] *Id*. at p. 5 (disclosure of such "highly proprietary and commercially sensitive information," "would harm customers by placing the company at a commercial disadvantage in numerous potential scenarios.").
[4] *Id.* at pp. 6-7 PacifiCorp evidence little faith in the intelligence of its customers: (the nature of the Coal Analysis "could mislead, rather than inform, the public.") (results could create "the potential for confusion if the results are taken out of context.").

In PacifiCorp's July 16, 2018 response brief ("Response"), the company failed to meet its burden justifying the complete redaction of the study's results. Instead, it fell back on "broad allegations unsubstantiated by specific facts,"[5] which the Protective Order explicitly states is an insufficient basis for confidential designations. With regard to the specific redactions in the PowerPoint, PacifiCorp could not "identify the factual and legal basis of how the challenged information is protected under Oregon [law]."[6] Rather than provide a "narrowly-tailored" explanation with pin-pointed bases for each redaction, the company offered pages and pages of disjointed narrative unconnected to any specific redaction. Below, Sierra Club shows with specificity why all six redactions were improper.[7]

Improper Redaction # 1: Slide 5, PVRR(d) results

The company redacted the economic benefit or cost of retiring each of its coal units in 2022.

PacifiCorp's rationales for redaction of the PVRR(d)

The company laid out five purported reasons why the PVRR(d) analysis in the unredacted PowerPoint was "highly proprietary and commercially sensitive" and must never be shared with the public:[8]

(1) the PVRR(d) results are not public information;[9]

(2) PacifiCorp is working hard to "maintain secrecy," and has never shared preliminary PVRR (d) inputs and results before;[10]

(3) disclosure of the PVRR(d) results would harm PacifiCorp's customers, putting "the company at a competitive disadvantage in the marketplace;"[11]

(4) the company expended enormous resources to develop its modeling techniques;[12] and,

(5) the company's inputs are proprietary.[13]

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[5] Protective Order No. 16-461 at ¶9 (Dec. 5, 2016).
[6] *Id.*
[7] Sierra Club notes, however, that the Protective Order places the burden on PacifiCorp – not Sierra Club – to specifically identify the facts and law supporting its argument to maintain confidentiality.
[8] Response at p. 5.
[9] *Id.*
[10] *Id.* at p. 6.
[11] *Id.* at p. 7.
[12] *Id.* at p. 8.
[13] *Id.*

Sierra Club's response to PacifiCorp's justifications for the redactions on Slide 5

It is important to first put into context what the PVRR(d) results in the PowerPoint presentation show. Generally, a "Present Value Revenue Requirement differential" (PVRR(d)) is a modeling analysis that looks at two different scenarios: a base case, and a test case. The base case PVRR result looks at the total cost of operating PacifiCorp's entire system over twenty years. The test case changes a variable or assumption, and then runs the same model over the same twenty year period. The PVRR(d) is the model's estimated cost difference between those two scenarios. Importantly, the PVRR(d) is a modeled estimate. It is not a contract price, it is not a tax basis, it is not a dispatch plan, and it is not a business plan. While it can be an incredibly important piece of information in long-term planning, it is not the type of information that day-to-day market transactions are generally based on.

PacifiCorp's Response attempts to turn these long-term modeling results into a closely protected trade secret. This is just not the case. The only rationale among the five provided by the company that could possibly justify the redactions is the argument that disclosure could put the company at a competitive disadvantage in the marketplace. Yet, even here the company failed to provide the necessary facts and law to carry its burden. In support of its competitive disadvantage argument, PacifiCorp listed five ways its customers could be hit with higher rates should the PVRR(d) results be disclosed:

- Disclosure of the company's estimated environmental compliance costs included in the PVRR results, could disadvantage PacifiCorp in contract negotiations with third-party contractors to build and install any equipment necessary to meet environmental mandates.
- Disclosure could harm the company's negotiating position with federal and state agencies responsible for determining the necessary emissions control equipment at the individual coal units.
- Disclosure could negatively impact the company's ability to maintain its existing workforce and labor agreements.
- Disclosure could disadvantage the company when it negotiates with other parties to purchase coal for its plants by disclosing to potential counterparties the company's underlying economic assumptions and analysis (including coal cost assumptions).
- Disclosure of PVRR(d) results for the early retirement scenarios could hurt PacifiCorp in potential discussions with other parties related to the sale of PacifiCorp's interest in any

> of its coal units or in the potential sale of assets or equipment related to its coal plants.[14]

Each of these concerns is extremely removed from any possibility of customer rate shock as tied to the nine-slide PowerPoint. Moreover, the company provided no evidence that any of these events are currently unfolding so there is no specificity to the purported risks. Indeed, PacifiCorp avows throughout the PowerPoint that the results are strictly a modeling exercise and that it does not intend to take any specific business decisions based on the results.

For example, in regard to working with agencies and contractors to finalize and then install pollution controls, the company has said it has no plans to retrofit any of its coal units in the foreseeable future. Were that to change, the company would prepare fresh and detailed economic analyses on which it would base its decisions and negotiations with agencies and contractors. Agencies and contractors would also rely on up-to-date data on which they would base their decisions to work with the company. The claim that these specific numbers presented in a modeling exercise in 2018 will determine the ultimate costs of construction of controls that PacifiCorp currently has no intention of building is not credible.

Similarly, the potential sale of a coal unit, the renegotiation of a coal contract or labor agreement entails very specific due diligence requirements that reach a level of economic sophistication far beyond that revealed in the nine-slide PowerPoint. Again, that same idea applies for agencies and contractors. All of these entities undertake complex research before entering into agreements with PacifiCorp. It is unreasonably to assume that a competitor or contractor would base multimillion-dollar decisions on a PowerPoint presentation that is rife with explicit caveats and disclaimers. PacifiCorp cannot site to any pending or imminent contract negation or sale where knowledge of the PVRR(d) results would eliminate a business advantage that PacifiCorp otherwise would hold. Thus, each of the identified impacts are either too far removed temporally or place too much significance on what the company already has characterized as "preliminary and incomplete coal studies."[15]

Beyond the five alleged injuries, the company elsewhere argued it has never disclosed preliminary or incomplete coal studies.[16] In fact, PacifiCorp regularly releases preliminary

[14] *Id*. at p. 7.
[15] Response at p. 6.
[16] *Id.*

results to the public. For example, in the 2015 IRP, it released draft core case fact sheets detailing each of its preliminary portfolios.[17] It rightly acknowledged that economic analyses are works in progress and subject to change given constantly shifting energy prices, demand curves and regulatory requirements. That is why utilities prepare bi-annual IRPs—the analysis in one IRP is revised and updated as assumptions, priorities, and policies inevitably shift. The company appears to be asserting that only once it perfects a coal analysis that captures every conceivable variable, then it *may* share it with the public. That notion is not only unrealistic but conveniently subjective. Who gets to decide whether a coal analysis is finally "done?" Sierra Club asserts that the reasonably-informed public is capable of reading PacifiCorp's caveats and disclaimers along with the PowerPoint's results, and will eagerly wait for updates as the analyses are refined. Given the heightened attention on coal generation, climate considerations and renewable energy, the public has made clear it wants this information.[18]

Next, the company broadly claimed there is a longstanding Commission practice of allowing PacifiCorp to keep PVRR(d) results secret, referring specifically to LC 57.[19] The LC 57 decision to uphold designations of several narrow PVRR(d) results was connected to a Commission workshop to review the economic cost analysis at its Hayden and Craig coal plants. Importantly, the company identified that (a) the plant's owners were in current negotiations with third party contractors on the cost of pollution controls, and (b) PacifiCorp had issued a request for expressions of interest in Hayden and Craig. The company wanted to keep that particular PVRR(d) confidential on grounds that "[d]isclosure of PacifiCorp's compliance cost assumptions

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[17]Pacificorp, *2015 Integrated Resource Plan, Handout – Core Case Fact Sheets with Draft Results* (Nov.14, 2014), http://www.pacificorp.com/content/dam/pacificorp/doc/Energy_Sources/Integrated_Resource_Plan/2015IRP/PacifiCorp_2015IRP_DRAFTCoreCase_FactSheets_11-14-14.pdf; Robert Walton, *Sierra Club cries foul over PacifiCorp coal study secrecy* (June, 15, 2018), https://www.utilitydive.com/news/sierra-club-cries-foul-over-pacificorp-coal-study-secrecy/525817/.

[18] Heather Richards, *Is Coal Power too Expensive in the Country's Largest Coal State?* (June, 29, 2018), https://trib.com/business/energy/is-coal-power-too-expensive-in-the-country-s-largest/article_e9ed3295-fa21-5cde-af07-82adef5e34ec html; Pete Danko, *Sierra Club fights to make PacifiCorp coal study public* (July 3, 2018), https://www.bizjournals.com/portland/news/2018/07/03/sierra-club-fights-to-make-pacificorp-coal-study.html; Robert Walton, *Sierra Club Cries Foul Over PacifiCorp Coal Study Secrecy* (June, 15, 2018), https://www.utilitydive.com/news/sierra-club-cries-foul-over-pacificorp-coal-study-secrecy/525817/; Brian Maffly, *Utahns would pay millions less in utility bills if PacifiCorp used wind and solar instead of coal-fired power, environmentalists say* (June, 29, 2018), https://www.sltrib.com/news/environment/2018/06/28/report-commissioned-by/; Utah Public Radio, *Sierra Club Study Indicates Lower Cost For Renewable Energy* (July 4, 2018), http://upr.org/post/sierra-club-study-indicates-lower-cost-renewable-energy; Katharine Biele, *Coal is Still King in Utah, For Now* (July, 4, 2018), https://www.cityweekly.net/utah/high-anxiety/Content?oid=9619124; Jeff Stanfield, *PacifiCorp accused of covering up costs of coal-fired plants* (July 12, 2018), https://platform.mi.spglobal.com.

[19] Response at p. 10.

and the results of its economic analysis would compromise PacifiCorp's negotiating position if a buyer expresses interest."[20] Both reasons justifying the designations were tied to specific and timely circumstances, not the speculative and open-ended harms PacifiCorp tries to lean on here.

Finally, PacifiCorp broadly asserts that "the Commission has consistently recognized that certain information must be reasonably provided on a confidential basis as a trade secret when public disclosure would harm customers. Such is the case here."[21] Sierra Club agrees. We have not asked the Commission to open up the underlying workpapers, analyses or other input documents that support the PowerPoint. But, the failure to provide the public with the basic summary of results depicted in the PowerPoint harms customers rather than protects them. Were PacifiCorp to have its way, the only things the public would ever see would be lopsided pictures of a rosy utility that invests in wind and transmission and has no underperforming assets; similar to the Vision 2020 papers. In fact, the whole genesis of this Coal Analysis occurred because PacifiCorp failed to comply with the Commission's requirement to pursue least cost, least risk planning. Thus, the public is entitled to the basic information depicted in the nine-side PowerPoint. In fact, the public interest demands it.

Why the PVRR(d) results must be disclosed to the public

Disclosure of the PVRR(d) results on Slide 5 would not put PacifiCorp at a competitive disadvantage in the marketplace. The PowerPoint does not include information on which competitive market transactions are based. The PowerPoint includes a hypothetical early retirement date for each unit and shows an estimated cost or benefit of that early retirement. Transactions in the competitive wholesale market are made on day-ahead or even hourly bases: apples and oranges in terms of relevance to tangible business decisions. The information in the PowerPoint is just not detailed enough to provide any competitive advantage in energy trading markets. In fact, models such as Strategist that are used for long-term planning purposes often gloss over or simplify the detailed dispatch characteristics that influence day to day trading. Traders have access to other sophisticated trade analytics that are much more relevant like those provided by EIA and financial ratings agencies, among other sources.

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[20] LC 57, PacifiCorp's Response to Ruling Requiring Redesignation of Workshop Presentation, at pp. 3-4 (Oct 23 2014).
[21] Response at pp. 9-10.

More specifically, what the table shows is whether a coal unit is higher or lower in cost on a PVRR basis compared to alternative scenarios. It does not show the specific dispatch costs of one generating source compared to another. It also shows the aggregate cost or benefit of each unit, expressed as single difference in PVRR, PacifiCorp's "PVRR(d)" which describes the loss or gain expected to be realized by ratepayers by holding or retiring each individual coal unit. That is, in rough terms, the economic value of each individual coal unit absent any specific details of a particular unit.

This type of information is exactly the same as the analysis PacifiCorp provided in support of its Energy Vision 2020 projects for the Utah Commission when seeking pre-approval for $2.2 billion in new transmission and wind projects. In that case, when the company was seeking support for a business decision it wanted to make, it was more than happy to go public with its economic assessment of the value of the proposed projects as compared to alternatives. From that docket:

> PacifiCorp's models show net customer benefits occur across all nine natural gas/CO2 price-policy scenarios over the 20-year period and in seven out of nine price-policy scenarios over the 30-year period of its analysis. PVRR(d) results for the Combined Projects among all nine price-policy scenarios over the 20-year period through 2036 range from $146 million in net customer benefits when assuming low natural gas prices and zero CO2 prices, to $629 million in customer benefits when assuming high natural gas prices and high CO2 prices. (May 15, 2018 Test. of R. Link at 6, Table 1-SR.) Combined PVRR(d) results over the remaining life (through 2050) of the Wind Projects range from a cost of $146 million (low natural gas prices and zero CO2 prices) to a benefit of $576 million (high natural gas prices and high CO2 prices).[22]

The only explanation for the disparate treatment of similar analyses is PacifiCorp chooses to be forthcoming with flattering information but moves to suppress less glowing projections.

[22] Utah Public Service Commission Docket 17-035-40, Order at p. 20 (June 22, 2018) (footnotes omitted).

Improper Redaction # 2 and # 3: Slide 5, Bridger SCR explanation

The company redacted specific information about Bridger in a footnote to the table about the cost-effectiveness (PVRR(d)) of installing SCR on units 1 and 2 at the bottom of slide 5.[23]

PacifiCorp's rational for the redaction of the Bridger SCR explanations

PacifiCorp did not address this redaction with specificity so the basis is unclear.

Sierra Club's specific objection

Given the vagueness of the company's Response, Sierra Club can only assume its concern must be that future contractors or state or federal air quality agencies might misunderstand the limitations of the SCR analyses in the PowerPoint and make future decisions that could hurt the company. Again, the company has already announced it has no plans to install these retrofits in the foreseeable future.[24] Therefore, if PacifiCorp is actually negotiating an installation schedule for specific retrofits at Bridger units 1 and 2 or is working with air quality agencies on near term pollution requirements, then the company must explain those negotiations to support the "factual and legal basis of how the challenged information is protected."[25] Any desire to keep potential SCR cost estimates secret based on inchoate future projects is outweighed by the public's interest in understanding the economic status of this plant. In fact, the company's co-owner, Idaho Power, has recently been asked hard questions about the future of Bridger including SCR installations.[26] PacifiCorp must share the economics of these units, because based on the factual, legal, and public interest considerations; the company has not met its burden.

Lastly, PacifiCorp claimed keeping the PVRR(d) results secret was consistent with the Commission's IRP guidelines.[27] However, under the Commission's guidelines for the IRP process, "the public…should be allowed significant involvement in the preparation of the IRP," and that such "[i]nvolvement includes opportunities to contribute information and ideas, <u>as well</u>

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[23] The 2017 IRP and IRP update included a PVRR(d) analysis of the efficacy of installing SCR on Bridger units 1 and 2 as compared to retirement and other available resources. *See* PacifiCorp's 2017 Integrated Resource Plan Update ("IRP Update") at pp.73-74.
[24] 2017 IRP Update at p. 2.
[25] Protective Order No. 16-461 at ¶9 (Dec. 5, 2016).
[26] LC 68, Order No. 18-176 at pp. 12-13 (May 23, 2018).
[27] Response at p. 8.

as receive information."[28] PacifiCorp's failure to disclose the PVRR(d) analysis contravenes the public's ability to receive any form of meaningful information by obscuring the basic premise of resource planning in Oregon, i.e. the pursuit of least-cost least risk planning.

Improper Redaction # 4: Slide 7, year by year change in costs

The redacted information in the chart on the left of Slide 7 shows changes in various costs and emissions over time.

PacifiCorp's rational for the redaction

PacifiCorp did not address this redaction with specificity so the basis is unclear.

Sierra Club's specific objection

Sierra Club incorporates by reference its objections to Redaction #1 above. In addition, customers must be allowed to assess, year by year, the economic health of each of PacifiCorp's coal units

The public is entitled to know whether and when the company must make changes to its resource mix in order to manage costs and risk. Absent this information, no one but a select few can understand when an inflection point may occur for a particular coal unit. In fact, absent this information, the public's real-world sense of these tipping points is sharply limited to the artificial constraints the company insists on introducing into its IRP System Optimizer runs each year. An unrestricted view of when the company might need to plan for resources transition is the exact type of data customers want and are entitled to in tandem with decisions under SB 1547.

Improper Redaction # 5: Slide 9, Conclusions and Next Steps, first bullet point

The redacted information in the first bullet point is a one sentence summation of the study's results.

PacifiCorp's rational for the redaction

PacifiCorp did not address this redaction with specificity so the basis is unclear.

[28] Order No. 07-002, Guideline 2 (emphasis added).

Sierra Club's specific objection

Sierra Club incorporates by reference its objections to Redaction #1 above. In addition, the bullet point provides a succinct and understandable sentence summing up the Coal Analysis results without naming any specific unit or divulging estimated cost/benefits in dollar amounts or years.

There is simply no rational basis for keeping this sentence secret. It is not plausible to think customers could be harmed were this sentence unmasked. Without repeating the objections above, PacifiCorp cannot make any showing that "other persons … can obtain economic value from its disclosure" leading to customer rate increases.[29] Nor is it credible that the company would be harmed if a rogue ratepayer failed to head all of the caveats and warnings throughout the PowerPoint and repeated the sentence in public.

PacifiCorp's shareholders might perceive harm associated with this sentence because it could reflect poorly on company decision-makers, but customers would not be put at risk. PacifiCorp is not allowed to protect its shareholders over its customers or the public interest. Likewise, it defies credulity to think that this summary statement could provide any market participant, agency or contractor with a competitive business advantage over PacifiCorp. Finally, given the "Caution!" disclaimer immediately below the bulleted sentence, supported by a whole page of caveats, it is an insult to the press, ratepayers, and the public in general to insist they cannot be trusted to understand the limitations exhaustively set forth throughout the PowerPoint. PacifiCorp has not met its burden to justify keeping this sentence secret.

This redaction is a perfect example of the company abusing the Commission's confidentiality policies. In a 2015 Commission order, the company was found to have over designated information that should have been publicly available in Oregon.[30] Contrary to the company's assertions, the Commission in no way carved out a general rule that PVRR(d) analyses must be kept secret.[31] The Commission held that in narrow circumstances and timing, disclosure of PVRR(d) analyses could pose a competitive disadvantage; but, the ALJ's final ruling in that proceeding was explicit: "an initial designation may be based on a reasonable

[29] Response at p. 6.
[30] LC 57, Order (Jan 9, 2015).
[31] Response at p. 10 citing the Commission's LC 57 rulings.

belief, rather than a strict certainty, in the material's confidentiality." [32] However, "I direct PacifiCorp to exercise care in future designations of confidentiality, and to limit those designations to material that qualifies as confidential material under our rules."[33]

Of course, PacifiCorp must meet its burden and fully justify each and every challenged designation under the particular circumstances of that designation along with the precise explanation of how customers would be harmed if the information were made public. But beyond that, it appears we have reached a tipping point, where the public is keenly interested in this issue. So even though Sierra Club has refrained over the years from challenging obvious over designations, this new clear and broad interest on the public's part requires the Sierra Club and the Commission to take steps to help the public get the information it wants and deserves. Releasing the full, unredacted Coal Analysis PowerPoint presentation demonstrates a first, good faith step in that direction. But in the future, it is incumbent on stakeholders and the Commission to better scrutinize the company's reliance on this tactic as means of carefully crafting and managing its public image by limiting the information its customers see.

Improper Redaction # 6: Slide 9, Conclusions and Next Steps, second bullet point, first sub-bullet point

The company redacted specific information about the cost-effectiveness of Bridger units 1 and 2.

PacifiCorp's rational for the redaction

PacifiCorp did not address this redaction with specificity so the basis unclear.

Sierra Club's specific objection

As with objection # 2, the benefit of keeping Bridger units 1 and 2 operating is an open question. Allowing the public access to the details of this debate provides a public benefit that far outweighs any speculative harm asserted by the company.

[32] LC 57 Order (March 3, 2015).
[33] *Id.*

Conclusion

Based on the above reasoning, Sierra Club respectfully requests that the Commission order PacifiCorp to remove its indefensible designations of protected information and provide the June 29, 2018 "Unit-by-Unit Coal Studies" presentation to the public immediately in unredacted form.

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Respectfully submitted,

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