

**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 WRITTEN
OBJECTION TO PACIFICORP’S
CONFIDENTIAL DESIGNATIONS

With this filing, Sierra Club objects to PacifiCorp’s designation of protected information in its June 29, 2018 compliance filing in LC 67.¹ On June 29, the company docketed a PowerPoint presentation describing its unit-by-unit coal study (“coal analysis”) in conformance with action items 5a -5h in the Commission’s final order No. 18-138. The problem is that PacifiCorp redacted the study results to the extent that no reader of the PowerPoint could discern anything beyond the study’s methodology and its purported caveats and limitations. **PacifiCorp hid all of the study’s findings.** For this reason, Sierra Club objects to all of the company’s designations of protected information in the coal analysis.

I. Introduction

Sierra Club, along with CUB, staff and other stakeholders have long argued that the Commission, customers, and the public have a right to know whether PacifiCorp is providing its customers with the least-risk, least-cost resource mix available. It is no secret in recent years the economics of coal-fired generation in the western interconnect have changed dramatically with energy efficiency, low cost renewables, and natural gas eroding the cost competitiveness of much of the west’s coal plants. Given this changing landscape and real evidence that at least some of the company’s coal plants may not be economic,² the Commission ordered and

¹ Sierra Cub files these objections in accordance with Uniform Trade Secrets Act, ORS § 646.461(4); Protective Order No. 16-461 ¶ 8.

² See, e.g., Washington Utilities and Transportation Commission, Pacific Power & Light Company 2017 Integrated Resource Plan Docket UE-160353, Attachment (“Attachment”). (“We are deeply concerned with the direct costs of continued operation of its coal-fueled resources and the magnitude of economic risk of continued investment in those units. Pacific Power’s IRP does not explicitly identify or discuss the risks faced by the utility and its ratepayers, including the costs of risks associated with the coal plants’ fuel source, projected capital investments, and ongoing operational expenses, or cost shifts to Washington customers when the Company must remove coal generation expense from Oregon rates.”) (May 8, 2018).

PacifiCorp agreed to disclose for each of its 24 coal units the cost or benefit of running the unit against the option of retiring it in 2022.³

It appears the company may have largely fulfilled its LC 67 obligation.⁴ However, the results of the analysis are only available to a select few individuals who are willing to intervene in an Oregon Commission docket and sign a protective order, or be legally bound by a private nondisclosure contract in another state. Today, regular residential ratepayers, many of their advocates, the press, which many customers rely on for news of their utility, and the general public have no access to any element of this important information. The failure to disclose this information is inconsistent with both standard IRP planning practice, prior PacifiCorp planning practice, and the intent and spirit of Order 18-138 in LC 67. We request that the Commission order PacifiCorp to make all of the redacted information available to the public immediately.

II. PacifiCorp Cannot Meet its Burden of Showing it Properly Designated the Study Results

PacifiCorp is entitled to designate only “trade secrets” as protected information. A trade secret is information that “derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use.”⁵ In response to Sierra Club’s objections, the company must identify a factual and legal basis for the challenged designations. However, thus far the company has not provided a defensible response.

During and at the conclusion of the stakeholder meeting on June 28, 2018, several governmental agencies and other attendees challenged the company for keeping the study results secret. PacifiCorp’s Rick Link responded to the opposition by saying the company did not want the data to be misinterpreted and used incorrectly given imperfections and caveats in the analysis. Boiled down, it appears because the study did not include every conceivable variable, the results cannot be trusted to be exact; so, the worry goes, the general public and “competitors” could read too much into it. Yet, even if accurate, these concerns cannot be shown to be trade

³ Order No. 18-138 (“Order”) at 12 (Apr. 27, 2018).

⁴ Sierra Club received the company’s work papers for the study on July 2, 2018, and has not yet had a chance to fully review the material as of this writing.

⁵ ORS § 646.461(4).

secrets because the company cannot show that competitors or other persons could gain economically if the results are made public. PacifiCorp is a regulated monopoly protected from other investor-owned utilities encroaching on its territory. So information on how some of its coal assets are performing economically cannot be shown to put it at some competitive disadvantage. In fact, in Sierra Club's experience, most utilities around the country with stakes in coal generation, have strong and poor performing generation on the books. In this way, PacifiCorp is no different.

III. PacifiCorp's Redaction of All Study Results Violates Utility Planning Principles and the Intent and Spirit of Order No. 18-138

In Order No. 18-138 the Commission underscored the importance of resource planning: "The IRP is a road map for providing reliable and least cost and least risk electric service to the utility's customers, consistent with state and federal energy policies, while addressing, and planning for, uncertainties. The primary outcome of the process is the selection of a portfolio of resources with the best combination of expected costs and associated risks and uncertainties for the utility and its customers."⁶

More specifically, Order 18-138 action item 5 required:

PacifiCorp will perform 25 system optimizer (SO) runs, one for each coal unit and a base case. PacifiCorp will summarize the results providing a table of the difference in PVRR resulting from the early retirement of each unit, an itemized list of coal unit retirement costs assumptions used in each SO run, and a list of coal units that would free up transmission along the path from the proposed Wyoming wind projects if retired. **PacifiCorp is to provide this information by June 30, 2018.** If there is a dispute about modeling in the meantime, PacifiCorp, Staff and parties should first attempt to resolve it informally, but if that fails, Staff may report back to us at a public meeting before the 2019 IRP is filed. A Commissioner workshop will likely be scheduled to review this analysis once it is complete.⁷

Standard utility planning practice does not dictate that the key components of the process, choosing the least-cost/least-risk resources, be carried out in secret, hidden from public scrutiny.

⁶ Order at 2.

⁷ *Id.* at 21 (emphasis added).

The very nature of the regulated monopoly protects it from a competitor moving in and undercutting its rates; thus, from its protected perch PacifiCorp is obligated to be fully transparent with its customers about its resource choices. The company portrays itself as valuing full public access:

PacifiCorp has pursued an open and collaborative approach to involve state regulatory agencies, customers and other stakeholders in our Integrated Resource Plan development. Since resource decisions can have significant economic and environmental consequences, conducting this planning with **transparency and full participation from the regulatory agencies and other interested and affected parties is essential.**⁸

Despite these requirements and promises, PacifiCorp has succeeded in carefully managing the information its customers see, keeping the details of bad decision making⁹ and bad expenditures secret.¹⁰ Under this backdrop, for years stakeholders have been asking for a full accounting of the economic health of the coal plants. For the company's 2013 IRP, Sierra Club asked the Commission to require PacifiCorp to disclose "which of [its] coal units are at risk with low gas prices and a price on carbon dioxide emissions, and if major expenditures should be pursued at those coal units."¹¹ In every IRP since, Sierra Club along with staff, CUB and other stakeholders have asked for a full coal plant economic analysis, a request that was finally granted in 2018.

Stakeholder requests for the economic study rested on company assurances that PacifiCorp, like all utilities, is resource agnostic, meaning the company will switch to less polluting and less carbon intensive energy when the economics support the shift. With increasing information that coal is a poor performer, the company has an obligation to keep its customers informed on the economic status of its resource portfolio. If coal generation is now less competitive than wind and solar, they cannot keep that data secret.

⁸ <http://www.pacificorp.com/es/irp/pip.html> (emphasis added).

⁹ WUTC, Final Order, Docket UE-152253 at 7, ("Due to its failure to continually evaluate the changing economics surrounding its decision to install selective catalytic reduction (SCR) systems on Units 3 and 4 of Bridger and thus demonstrate whether the investment was prudent, we allow Pacific Power recovery only of the costs for the systems, and we disallow any return the Company would have collected on the SCR.") (Sept. 1, 2016).

¹⁰ Attachment at 4 ("We are disappointed to see that Pacific Power's commitments to transparency and inclusiveness with the advisory group were not met, and encourage the Company to refocus on conducting its resource planning activities in that spirit.").

¹¹ Sierra Club's preliminary comments on LC 57 at 1 (Aug. 22, 2013).

In numerous IRPs, representatives from each of the intervenor parties, CUB, Commission and ODOE staff, and the company itself expended significant time and resources on the questions of whether an economic study was warranted at all; and if so, how it should be designed. Like staff and all other parties, Sierra Club dedicated one or two people to be privy to these secret deliberations on faith that one day an honest assessment, regardless of its outcome, would be publicly available so that Sierra Club could share the results with its member-customers. Sierra Club assumes other clean energy and ratepayer advocate groups were similarly situated, working behind the scenes towards a public outcome for ratepayers.

As for the Commission's need for publicly available study results, customers are increasingly engaged in their energy choices, especially in a quickly changing landscape where it is common knowledge that renewable energy is frequently cheaper than traditional fossil fuel generation. And with Oregon customers well aware that they will cease paying for PacifiCorp's coal generation in 2030, an open discussion on the economics of the coal fleet is long overdue. And as SB 1547 unfolds, the central question is whether the transition will prove affordable for all classes of customers. PacifiCorp's study is an important contribution to that ongoing conversation. Allowing PacifiCorp to hide this critical cost/benefit information from the public hampers the Commission's ability to keep the public informed and for it to make transparent decisions on the transition supported by a public record.

Sierra Club never considered the company would interpret Order 18-138 as allowing complete secrecy of the study results. In fact, had secrecy been a condition of the study, Sierra Club (and likely CUB and other stakeholders) would never have fought for it in the first place. There is no gain in years of work ending with information provided to only a select few, who after years of involvement already have a pretty good idea of what the results would entail anyway. Such secrecy flies in the face of transparency in decision-making and open government and is not in public interest.

