



September 24, 2014

Via Electronic Filing and FedEx

Public Utility Commission
Attn: Filing Center
3930 Fairview Industrial Drive SE
Salem, OR 97308

Re: Dockets LC 57 & UM 1707 Sierra Club Motions

Please find enclosed the original and one (1) copy of Sierra Club's Motion to Consolidate Matters; Motion Requesting Oral Argument for Challenge of Designation; and Request for Expedited Review, filed concurrently in the above-referenced dockets.

Please let me know if you have any questions. Thank you.

Respectfully submitted,

/s/ Derek Nelson

Derek Nelson
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cc: Service Lists

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

LC 57 &
UM 1707

In the Matters of

PACIFICORP, dba PACIFIC POWER,

2013 Integrated Resource Plan

&

SIERRA CLUB,

Regarding violation of Protective Order
No. 13-095.

SIERRA CLUB’S MOTION TO
CONSOLIDATE MATTERS; MOTION
REQUESTING ORAL ARGUMENT FOR
CHALLENGE OF DESIGNATION; and
REQUEST FOR EXPEDITED REVIEW

In accordance with OAR 860-001-0420, Sierra Club respectfully moves the Commission on two linked procedural matters. First, we request that the Commission consolidate Sierra Club’s motion challenging PacifiCorp’s designation of all information associated with the August 6, 2014 technical workshop as confidential docketed in LC 57 with UM 1707, which covers PacifiCorp’s allegations that Sierra Club breached protective order 13-095 by using information from the August 6 workshop. Second, and related, we respectfully request oral argument on Sierra Club’s challenge to the company’s designation to be held on October 15 together with the scheduled hearing in UM 1707. Finally, we request expedited briefing on these straightforward matters. Sierra Club informally conferred with all parties on these motions. Only PacifiCorp opposed consolidation, oral argument on the matter of over-designation, and an expedited schedule.¹ These motions are being filed concurrently in both LC 57 and UM 1707.

¹ See Attachment 1, Email from Sarah Wallace, PacifiCorp, to Gloria D. Smith, Sierra Club (September 24, 2014).

I. The Commission Will Benefit From Consolidating UM 1707 and the LC 57 Designation Challenge for Hearing on October 15

This matter arose when PacifiCorp accused the Sierra Club of using and disclosing confidential information from the Commission’s August 6 workshop in Wyoming data requests to the company. Since PacifiCorp made those allegations, it has become apparent that the scope of the company’s designation of the August 6 materials is central to the Commission’s ability to resolve the protective order dispute.² Therefore, Sierra Club challenged the scope of the company’s designation. In the course of the briefing on the designation issue, the company asserted its position that it had designated as confidential every written and spoken word associated with the August 6 workshop. Conversely, Sierra Club’s position is that no utility may designate as confidential information already in the public realm prior to any confidential meeting.³ Given that resolution of the *designation* issue may have far reaching implications going forward, numerous parties to LC 57 intervened in UM 1707, including CUB, ICNU, Renewable Northwest and Northwest Energy Coalition. To one degree or another all of these parties have expressed concerns about the permissible use of information obtained in LC 57 in subsequent dockets given the company’s position on the scope of designation.⁴

More broadly, within the confines of UM 1707, CUB, Renewable Northwest and Northwest Energy Coalition raised important legal and policy issues that implicate both dockets, and therefore consolidation would aid transparency by allowing parties with longstanding interests to be fully heard. Indeed, in UM 1707, intervenors raised the following interconnected issues: (1) transparency of the Commission’s process; (2) the importance of discovery practice

² At the August 18, 2014 conference call, Judge Grant noted that “Sierra Club has asked for the appointment of an ALJ to help resolve this matter.” He went on to clarify that the point of the call was to “discuss the process the Commission will use to address this matter.” Judge Grant ultimately stylized the dispute as a “show cause” docket; nevertheless, this remains a dispute between PacifiCorp and Sierra Club.

³ See e.g., Sierra Club’s Reply Brief Denying Alleged Violations of Protective Order at p. 6, Docket No. UM 1707 (September 5, 2014).

⁴ See, e.g., Attachment 2, CUB Data Requests 16-25, Docket No. LC 57 (September 2, 2014).

supporting links between Integrated Resource Plans and rate cases; (3) concerns about over designation of information as confidential; (4) clear understanding of purpose and consequences of general protective orders; and (5) measured approach to sanctions for alleged violations.⁵ The only means for the Commission to efficiently and visibly address these issues is to consolidate both matters and allow for interested parties to present oral argument on October 15.

Finally, as mentioned above, in UM 1707, Sierra Club argued that PacifiCorp's overbroad claim of designation is linked to the company's allegations of breach. Given the seriousness of PacifiCorp's allegations and its unprecedented request for the Commission to impose maximum sanctions, Sierra Club seeks the fullest opportunity to defend itself vigorously. We are concerned that an arbitrary delineation of these two proceedings would require that Sierra Club silo linked facts and arguments. In other words, at oral argument it could be prejudicial to prohibit Sierra Club from referencing PacifiCorp's overbroad designation that led to the current allegations against Sierra Club in the first place.

II. The Commission Should Expedite the Briefing Schedule for these Motions

Sierra Club requests expedited consideration of this motion as follows: responses would be filed within 2 days of the service of the motion, and any reply would be filed within 2 days of the response. None of the parties to UM 1707 have opposed this schedule except for PacifiCorp. Given that the relevant issues have been fully briefed, an expedited schedule should not impose any burden on the parties, and it would facilitate resolution of the matter well before the October 15th hearing date. PacifiCorp opposes the request for expedited review, yet it did not offer any explanation why it would not be able to respond to this straightforward motion within 48 hours, or offer any other suggested schedule. In the event that the Commission does not allow for

⁵ See, e.g., CUB Brief, Docket No. UM 1707 (September 23, 2014), and Joint Response of Renewable NW and NW Energy Coalition to CUB's Motion for Permission to File Briefing Out of Time, Docket No. UM 1707 (September 23, 2014).

expedited briefing on the current motion, Sierra Club will file a reply within 48 hours of PacifiCorp's response and respectfully requests that the Commission decide this matter at least 7 days before the October 15th hearing.

III. Conclusion

Sierra Club respectfully requests that the Commission:

1. Expedite briefing on this motion as follows: Responses would be filed by September 26, and any Reply would be filed by September 30;
2. Consolidate Sierra Club's motion challenging PacifiCorp's confidential designation docketed in LC 57 with UM 1707; and,
3. Allow oral argument on both matters together at the October 15th hearing date.

Dated September 24, 2014

Respectfully submitted,

 /s/ Gloria D. Smith

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Attachment 1



Derek Nelson <derek.nelson@sierraclub.org>

Fwd: UM 1707 - CUB's Motion to Admit Brief Out of Time

Derek Nelson <derek.nelson@sierraclub.org>
To: Derek Nelson <derek.nelson@sierraclub.org>

Wed, Sep 24, 2014 at 10:54 AM

----- Forwarded message -----

From: **Wallace, Sarah** <Sarah.Wallace@pacificorp.com>

Date: Tue, Sep 23, 2014 at 3:29 PM

Subject: RE: UM 1707 - CUB's Motion to Admit Brief Out of Time

To: Gloria Smith <gloria.smith@sierraclub.org>, Sommer Templet <sommer@oregoncub.org>

Cc: Dockets <dockets@oregoncub.org>, "dockets@renewablenw.org" <dockets@renewablenw.org>,

"jec@dvclaw.com" <jec@dvclaw.com>, "Davison, Melinda J. (ICNU)" <mjd@dvclaw.com>,

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Catriona McCracken <catriona@oregoncub.org>, "brmullins@mwanalytics.com" <brmullins@mwanalytics.com>,

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<puc.filingcenter@state.or.us>

Gloria –

PacifiCorp does not agree to consolidation of UM 1707 and the motion challenging the designation of confidential information in LC 57. The ALJ has repeatedly stated that the two issues are *not* inextricably related.

It is important to note that the UM 1707 proceeding is a Commission-initiated show cause proceeding in which the ALJ ordered Sierra Club to “justify and explain its actions” in “improperly us[ing] the handout in the Wyoming case in violation of our protective order.” It is not a dispute between Sierra Club and PacifiCorp. The motion challenging the confidentiality designation, on the other hand, is a dispute between PacifiCorp and Sierra Club. PacifiCorp does not agree that oral argument on the motion challenging the designation of confidential information in LC 57 is necessary, particularly because Sierra Club has not properly challenged the designation of the materials that PacifiCorp actually designated as confidential, instead insisting on challenging the “designation” of the information in Sierra Club’s data request as confidential.

We also do not agree to expedited briefing on the motions. We would not object to a request for a prehearing conference to address these motions, as well as the motions CUB has filed or has indicated an intent to file.

Sarah

Sarah K. Wallace

Pacific Power | Assistant General Counsel

825 NE Multnomah Street | Suite 1800 | Portland, Oregon 97232

Telephone 503-813-5865 | Cell 503-341-0508

sarah.wallace@pacificorp.com

From: Gloria Smith [mailto:gloria.smith@sierraclub.org]
Sent: Tuesday, September 23, 2014 2:58 PM
To: Sommer Templet
Cc: Dockets; dockets@renewablenw.org; jec@dvclaw.com; Davison, Melinda J. (ICNU); megan@renewablenw.org; wendy@nwenergy.org; Jenks, Bob (Oregon CUB); jason.w.jones@state.or.us; Catriona McCracken; brmullins@mwanalytics.com; kevin@parks-law-offices.com; Wallace, Sarah; PUC.FilingCenter
Subject: Re: UM 1707 - CUB's Motion to Admit Brief Out of Time

The Commission has set oral argument for October 15 in the UM 1707 matter regarding alleged violations of the protective order. Sierra Club's motion challenging PacifiCorp's designation of materials related to UM 1707 as confidential remains pending separately in LC 57. For practical reasons concerning travel and scheduling, because the two issues are inextricably related, and to facilitate transparency in the proceedings, we plan to move the Commission to consolidate the two matters for hearing on Oct 15th. Sierra Club would also request expedited briefing on the motions as follows: any responses would be filed within 2 days of the service of the motion, and any reply would be filed within 2 days of the response.

Please advise whether you agree to consolidation of UM 1707 and the motion challenging designation of confidential information in LC 57, and to both matters going before the Commission on October 15. Sierra Club would prefer to avoid the need for motion practice, please advise us of your position before **5:00 pm today**. Thank you.

--

Gloria D. Smith

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CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or attorney work product. If you receive this e-mail inadvertently, please reply to the sender and delete all versions on your system.

Attachment 2



Citizens' Utility Board of Oregon

610 SW Broadway, Suite 400
Portland, OR 97205
(503) 227-1984 • fax (503) 274-2956 • cub@oregoncub.org • www.oregoncub.org

September 2, 2014

DATA REQUEST RESPONSE CENTER
PACIFICORP
825 NE MULTNOMAH ST. STE 2000
PORTLAND, OR 97232

Re: LC 57 CUB Data Requests 16-25

Please send responses to the following data requests to Nadine Hanhan at nadine@oregoncub.org and dockets@oregoncub.org. For confidential material, please send responses to the address above for CUB. Please assume that these are ongoing requests if any additional information becomes available during the pendency of the case. If you have any questions, call us at (503) 227-1984.

16. Please provide a copy of the Craig units 1 and 2 “participation agreement” signed and effective between PacifiCorp and any other Craig 1 and 2 owners.
 - a) Were the provisions of the current agreement in effect in [REDACTED] 2012?
 - b) If the provisions of the 2012 “participation agreement” were different than the provisions of the agreement that is effective today, then please provide the participation agreement in force in [REDACTED] 2012 as well.
 - c) Please provide any and all amendments or addenda in force in [REDACTED] 2012 and also today.
17. Please provide a copy of the Hayden “participation agreement” signed and effective between PacifiCorp and any other Hayden 1 owners.
 - a) Were the provisions of the current agreement in effect in [REDACTED] 2012?
 - b) If the provisions of the 2012 “participation agreement” were different than the provisions of the agreement that is effective today, then please provide the participation agreement in force in [REDACTED] 2012 as well.
 - c) Please provide any and all amendments or addenda in force in [REDACTED] 2012 and also today.
18. Please provide a copy of the coal contract(s) in effect for Craig units 1 and 2 during 2012.

19. Please provide a copy of all coal contract(s) in effect for Craig units 1 and 2 today.
20. Please provide a copy of the coal contract(s) in effect for Hayden 1 and 2 during 2012.
21. Please provide a copy of the coal contract(s) in effect for Hayden units 1 and 2 today.
22. Please provide copies of any and all owner or operator analysis(es) for continuation versus conversion or shut down for the following units:
 - a) Hayden units 1 and 2
 - b) Craig units 1 and 2.
23. Please provide copies of PacifiCorp's analysis for continuation versus conversion or shut down for the following units:
 - a) Hayden units 1 and 2
 - b) Craig units 1 and 2.
24. Please provide documentation related to the Company stages or levels of review that the Company engages in for each coal contract for each coal plant prior to final approval.
25. Please also provide documentation related to the frequency of coal contract review or re-review that the Company conducts both before and after signing and activation of each contract.

Thank you for your prompt attention to this request.

Sincerely,



Nadine Hanhan
Utility Analyst
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 400
Portland, OR 97205
(503) 227-1984, x11
nadine@oregoncub.org

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September, 2014, I caused to be served the foregoing MOTION TO CONSOLIDATE MATTERS; MOTION REQUESTING ORAL ARGUMENT FOR CHALLENGE OF DESIGNATION; and REQUEST FOR EXPEDITED REVIEW OF SIERRA CLUB upon all party representatives on the official service lists for these proceedings via electronic mail.

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//

Dated this 24th day of September, 2014 at San Francisco, CA.

/s/ Derek Nelson

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