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July 31, 2018

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

Attn: Filing Center

**RE: LC 67—PacifiCorp's Motion to Supplement the Record**

PacifiCorp d/b/a Pacific Power provides the enclosed motion to supplement the record in the above-referenced docket with regard to Sierra Club's Written Objection to PacifiCorp's Confidential Designations

Please direct questions on this filing to Natasha Siores at (503) 813-6583.

Sincerely,



Etta Lockey  
Vice President, Regulation

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**LC 67**

In the Matter of  
PACIFICORP, d/b/a PACIFIC POWER,  
2017 Integrated Resource Plan.

PACIFICORP'S MOTION TO  
SUPPLEMENT THE RECORD

In accordance with OAR 860-001-0420(1), PacifiCorp d/b/a Pacific Power submits this motion to supplement the record to reflect recent developments related to Sierra Club's Written Objection to PacifiCorp's Confidential Designations, which Sierra Club filed on July 9, 2018.

PacifiCorp indicated in its sur-reply filed on July 26, 2018, that it was currently in litigation with Sierra Club in the Thurston County Superior Court in Washington to prevent the public disclosure of the confidential Coal Analysis under the Washington Public Records Act.<sup>1</sup> On July 27, 2018, the Court held a hearing on PacifiCorp's Motion for Emergency Declaratory Relief or, in the Alternative, Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue. Counsel for Sierra Club and counsel for the Washington Utilities and Transportation Commission (WUTC) appeared. At the end of the hearing, the Court made the following findings under RCW 80.04.095:<sup>2</sup>

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<sup>1</sup> PacifiCorp's Sur-Reply to Sierra Club's Objection to PacifiCorp's Confidential Designations at 12-13.

<sup>2</sup> RCW 80.04.095 states: "Records, subject to chapter 42.56 RCW [Washington's Public Records Act], filed with the commission or the attorney general from any person which contain valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, shall not be subject to inspection or copying under chapter 42.56 RCW: (1) Until notice to the person or persons directly affected has been given; and (2) if, within ten days of the notice, the person has obtained a superior court order protecting the records as confidential. The court shall determine that the records are confidential and not subject to inspection and copying if disclosure would result in private loss, including an unfair competitive disadvantage. When providing information to the commission or the attorney general, a person shall designate which records or portions of records contain valuable commercial information." Nothing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings.

(1) PacifiCorp has made a sufficient threshold showing that the redacted information included in the Coal Analysis constitutes valuable commercial information, including trade secrets or confidential marketing, cost, or financial information under RCW 80.04.095;

(2) PacifiCorp has made a sufficient threshold showing that disclosure of the confidential information included in the Coal Analysis would result in private loss, including an unfair competitive disadvantage for PacifiCorp; and

(3) The Court concludes that protection of the records as confidential is appropriate on a temporary basis pending full adjudication of the claims for declaratory and injunctive relief.<sup>3</sup>

Based on these findings, the Court granted PacifiCorp's motion and precluded the WUTC from disclosing the Coal Analysis to Sierra Club or any other party pending a further hearing on a preliminary injunction, which is scheduled for September 7, 2018. The Court set the hearing date, in part, to allow the litigation under the protective order in Docket No. LC 67 to conclude before the hearing on the preliminary injunction.

A complete copy of the Court's Order is attached as Exhibit 1 to this motion.

Respectfully submitted this 31<sup>st</sup> day of July 2018.

By:



Matthew McVee  
Chief Regulatory Counsel  
Attorneys for PacifiCorp

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<sup>3</sup> *PacifiCorp d/b/a Pacific Power & Light Co. v. Wash. Utils. & Transp. Comm'n and Sierra Club*, Thurston County Superior Court Case No. 18-2-03640-34, Order Granting Motion for Emergency Declaratory Relief or, in the Alternative, Temporary Restraining Order at 2-3 (July 27, 2018).

## **Exhibit 1**

2018 JUL 27 AM 9:59

Linda Myhre Enlow  
Thurston County Clerk

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<input type="checkbox"/> EXPEDITE (if filing within 5 court days of hearing) <input checked="" type="checkbox"/> No Hearing Set <input type="checkbox"/> Hearing is Set: Date: <u>Thursday, July 26, 2018</u> Time: <u>1:00 P.M.</u> Judge/Calendar: <u>Civil Ex Parte</u>
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF THURSTON

PACIFICORP D/B/A PACIFIC POWER &  
LIGHT COMPANY,

Plaintiffs,

vs.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,  
a Washington state agency, and SIERRA  
CLUB, a foreign non-profit corporation,

Defendants.

No. 18-2-03640-34

EX PARTE

[Clerk's Action Required]

~~[PROPOSED]~~ ORDER GRANTING  
MOTION FOR EMERGENCY  
DECLARATORY RELIEF OR, IN THE  
ALTERNATIVE, TEMPORARY  
RESTRAINING ORDER AND ORDER  
TO SHOW CAUSE WHY A  
PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE

This matter having come for hearing before this Court on the motion of plaintiff PacifiCorp, d/b/a/ Pacific Power & Light Company (PacifiCorp) for the following alternative emergency relief:

1. A declaration that the subject PacifiCorp commercial information is confidential under RCW 80.04.095, together with an order protecting the information as confidential.

and/or

2. A declaration that, pursuant to RCW 42.56.540 examination of PacifiCorp's confidential information would clearly not be in the public interest and would substantially

[PROPOSED] ORDER GRANTING MOTION FOR  
EMERGENCY DECLARATORY RELIEF OR, IN THE  
ALTERNATIVE, TEMPORARY RESTRAINING ORDER - 1

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SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
1420 5th Avenue, Suite 3400  
Seattle, WA 98101-4010  
Telephone: 206.622.1711

1 and irreparably damage PacifiCorp and its customers, together with an order preventing its  
2 examination.

3 **or**

4 3. A temporary restraining order and an order to show cause why a preliminary  
5 injunction should not issue prohibiting the Washington Utilities and Transportation  
6 Commission (WUTC) from disclosing the subject information.

7 The Court having considered the records and files and being fully advised, now  
8 therefore,

9 **FINDS THAT:**

10 1. The redacted information included in PacifiCorp's "Unit-by-Unit Coal Studies,  
11 Confidential Workshop, 2019 IRP Public Input Meeting – June 28, 2018" (hereafter referred  
12 to as the Coal Analysis) constitutes valuable commercial information, including trade secrets  
13 or confidential marketing, cost, or financial information under RCW 80.04.095;

14 2. The redacted information included in the Coal Analysis is properly designated  
15 confidential under RCW 80.04.095; and

16 3. Disclosure of the redacted confidential information included in the Coal  
17 Analysis would result in private loss, including an unfair competitive disadvantage.

18 **and/or**

19 1(A). Pursuant to RCW 42.56.540, examination of the redacted information included  
20 in the Coal Analysis would clearly not be in the public interest; and

21 2(A). Such examination would substantially and irreparably damage PacifiCorp and  
22 its customers.

23 **or**

24 1(B). PacifiCorp has made a sufficient threshold showing that the redacted  
25 information included in the Coal Analysis constitutes valuable commercial information,  
26 including trade secrets or confidential marketing, cost, or financial information under RCW

22

1 80.04.095, and/or examination would clearly not be in the public interest and would,  
2 substantially and irreparably harm PacifiCorp and its customers under RCW 42.56.540; and

3 2(B). PacifiCorp has made a sufficient threshold showing that disclosure of the  
4 confidential information included in the Coal Analysis would result in private loss, including  
5 an unfair competitive disadvantage for PacifiCorp; and/or examination of the redacted  
6 information included in the Coal Analysis is not in the public interest and would substantially  
7 and irreparably damage PacifiCorp and its Washington customers; and

8 3(B). The Court concludes that protection of the records as confidential is appropriate  
9 on a temporary basis pending full adjudication of the claims for declaratory and injunctive  
10 relief.

11  
12 **IT IS HEREBY ORDERED THAT:**

13 PacifiCorp's Motion for Emergency Declaratory Relief or, in the Alternative,  
14 Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should  
15 Not Issue is granted as follows:

16 ~~1. The confidential information in the Coal Analysis is protected from public~~  
17 ~~disclosure under RCW 80.04.095 and/or RCW 42.56.540, and the WUTC is prohibited from~~  
18 ~~releasing the information requested by Sierra Club.~~

19 ~~or~~

20 2. The WUTC shall not disclose the subject information to Sierra Club or any  
21 other party pending a further hearing as to a preliminary injunction which is scheduled for  
22 September 7, 2018 at 9 am. before Judge Schaller (22). This Order shall stay in effect until the conclusion of that hearing.

23 ORDERED this 27<sup>th</sup> day of July, 2018. at 10:01 Am.

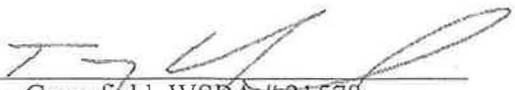
24  
25 REBEKAH ZINN  
26 Superior Court Judge  
COURT COMMISSIONER

[PROPOSED] ORDER GRANTING MOTION FOR  
EMERGENCY DECLARATORY RELIEF OR, IN THE  
ALTERNATIVE, TEMPORARY RESTRAINING ORDER - 3

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