

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

LC 57

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2013 Integrated Resource Plan

RULING

**DISPOSITION: PACIFICORP TO REDESIGNATE WORKSHOP
PRESENTATION**

On August 22, 2014, Sierra Club filed a motion challenging PacifiCorp's designation of information provided during an August 6, 2014 Commission workshop as confidential and subject to the terms of the protective order issued in this docket (Sierra Club Motion). PacifiCorp filed a response on September 5, 2014, and Sierra Club filed a reply on September 16, 2014.

Sierra Club challenges the designation of confidentiality on which PacifiCorp relies to claim that Sierra Club "used or disclosed" confidential workshop information in violation of the protective order in place in this docket in an out-of-state proceeding.¹ More generally, Sierra Club argues that it is challenging PacifiCorp's designation of all of the information, written and oral, exchanged at the August 6 workshop, and that it is now the company's burden to show that it acted in good faith and limited its designations to specific workshop disclosures that constituted actual trade secrets.

In PacifiCorp's response, the company argues that Sierra Club fails to specifically identify the information that Sierra Club contends was improperly designated as confidential, as required by our rules. PacifiCorp further argues that the information it designated as confidential during the August 6 workshop meets the standard for confidential information articulated in ORCP 36(C)(7),² because the workshop information consisted of the company's economic analyses of emissions control investments and its legal analyses of participation agreements and coal supply contracts, all of which qualify as protected trade secrets or other confidential research or commercial information.

¹ See Sierra Club Motion at 2, citing email from counsel for PacifiCorp stating that PacifiCorp "is concerned about every one" of Sierra Club's out-of-state data requests, "because every one of those requests either uses or discloses (or both) confidential information provided during the confidential August 6, 2014 workshop." PacifiCorp's claim that Sierra Club breached the protective order in place in this docket is being addressed in Docket No. UM 1707.

² ORCP 36(C)(7) limits disclosure of a "protected trade secret or other confidential research, development, or commercial information."

Discussion

The Commission’s general protective order permits a party to designate as confidential “information that it reasonably believes falls within the scope of ORCP 36(C)(7).”³ Confidential designations “must be made in good faith and be limited to the portions of the document that qualify as a protected trade secret or other confidential research, development, or commercial information.”⁴ A party may challenge a designation of information as confidential by notifying the designating party; once notified, the designating party must show that the challenged information is covered by ORCP 36(C)(7) or is exempt from disclosure under the Public Records Law. If parties are unable to resolve a confidentiality dispute informally, a challenging party may file an objection to the confidential designation, identifying the information in dispute.⁵

At the August 6 workshop, PacifiCorp provided hard copies of a PowerPoint presentation to workshop participants addressing the company’s environmental investments. PacifiCorp designated the entirety of the presentation as confidential and subject to the protective order in this docket. Even a cursory review, however, shows that the document contains information that was publicly available at the time of the workshop, including a quotation from a publicly available Commission order.

To clarify the scope of the parties’ dispute and to facilitate the Commission’s resolution of this matter, I instruct PacifiCorp to file an updated version of its August 6 PowerPoint presentation that designates as confidential only those portions of the presentation that the company contends constitute confidential information under our rules, with an explanation of the basis for each claim of confidentiality. Sierra Club will then have the opportunity to respond to PacifiCorp’s arguments. I adopt the following procedural schedule:

EVENT	DATE
PacifiCorp PowerPoint Presentation and Explanation in Support of Confidential Designation due	October 23, 2014
Sierra Club Reply due	October 29, 2014

Dated this 17th day of October, 2014 at Salem, Oregon.



Shani Pines
Administrative Law Judge

³ See OAR 860-001-0080(a).

⁴ OAR 860-001-0080(b).

⁵ OAR 860-001-0080(d)-(e).