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VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

**Re: LC 67 and LC 70: In the Matters of PACIFICORP, d/b/a PACIFIC POWER, 2017
Integrated Resource Plan and 2019 Integrated Resource Plan.**

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic copy of PacifiCorp's Opposition to Sierra Club's Motion for Waiver and Appeal of ALJ Ruling, and Response to Commission Request for Additional Information.

Please contact this office with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to be "Katherine McDowell", written over a solid black line that serves as a signature line.

Katherine McDowell

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
LC 67, LC 70**

In the Matters of
PACIFICORP, d/b/a PACIFIC POWER,
2017 Integrated Resource Plan and
2019 Integrated Resource Plan.

**PACIFICORP’S OPPOSITION TO
SIERRA CLUB’S MOTION FOR
WAIVER AND APPEAL OF ALJ
RULING, AND RESPONSE TO
COMMISSION REQUEST FOR
ADDITIONAL INFORMATION**

I. INTRODUCTION

On June 29, 2018, PacifiCorp filed a unit-by-unit coal studies presentation (Coal Analysis) in docket LC 67, in compliance with an order of the Public Utility Commission of Oregon (Commission). PacifiCorp designated certain information in the filing confidential, and Sierra Club objected. On August 7, 2018, the administrative law judge (ALJ) issued a ruling denying Sierra Club’s objection (ALJ Ruling).¹ After 52 days, Sierra Club filed an untimely appeal of the ALJ Ruling. One week later, Sierra Club moved for waiver of the rule requiring ALJ certification for an appeal to the Commission and the 15-day filing deadline for certification requests. The Commission should deny Sierra Club’s motion for waiver of the certification rule and the 15-day filing deadline. Alternatively, the Commission should deny certification, and reject Sierra Club’s appeal.

Sierra Club has not met the procedural or legal requirements for appeal and reversal of the ALJ Ruling. Contrary to Sierra Club’s arguments, the ALJ Ruling is well grounded in the law, and includes all findings required to maintain the confidentiality of the designated

¹ *In the Matters of PacifiCorp, dba Pacific Power, 2017 Integrated Resource Plan and 2019 Integrated Resource Plan, Dockets LC 67, LC 70 Ruling (Aug. 7, 2018).*

1 information. Release of the confidential information could cause serious harm to PacifiCorp
2 and its customers, contrary to the public interest. PacifiCorp plans to publicly release the
3 results of the final, revised Coal Analysis in the 2019 IRP, scheduled to be filed in less than
4 six months.

5 **II. BACKGROUND**

6 As part of its 2017 IRP process in docket LC 67, PacifiCorp agreed to provide an
7 economic analysis of its coal units—based on certain selective assumptions—to calculate the
8 present value of revenue requirement differential (PVRR(d)) between scenarios with and
9 without specific coal-unit retirements assumed to occur in 2022.² In its order acknowledging
10 PacifiCorp’s 2017 IRP, the Commission directed PacifiCorp to provide this information by
11 June 30, 2018.³ The Commission had previously approved entry of a protective order in
12 docket LC 67, under which PacifiCorp could make confidential information available to
13 participants in the Oregon IRP process.⁴

14 In compliance, PacifiCorp filed the Coal Analysis and supporting materials on June
15 29, 2018. PacifiCorp’s filing expressly cautioned that the results of the Coal Analysis were
16 preliminary and did not provide a complete, portfolio-level view of the economics of
17 PacifiCorp’s coal units. PacifiCorp redacted a small amount of confidential information on
18 three of nine pages of the presentation. The redacted information is narrowly-tailored to

² *In the Matter of PacifiCorp, dba Pacific Power, 2017 Integrated Resource Plan*, Docket No. LC 67, Order No. 18-138 at 11-12 (Apr. 27, 2018). Naughton Unit 3 and Cholla Unit 4 have earlier retirement date assumptions of January 30, 2019, and December 31, 2020, in the reference case and were not included in the Coal Analysis.

³ Order No. 18-138 at 12.

⁴ *In the Matter of PacifiCorp, dba Pacific Power, 2017 Integrated Resource Plan*, Docket LC 67, General Protective Order, Order No. 16-461 (Dec. 5, 2016).

1 PVRR(d) results for each unit (on pages five and nine), and the commercially sensitive cost
2 information used to develop the PVRR(d) results (on page seven).

3 PacifiCorp presented the unredacted Coal Analysis to all stakeholders qualified to
4 review confidential information, including Sierra Club, in a 2019 IRP public input meeting
5 on June 28, 2018. This session included parties to dockets LC 67 and LC 70, PacifiCorp’s
6 2019 IRP docket.

7 On July 9, 2018, Sierra Club filed an objection to “all of the company’s designations
8 of protected information” in the Coal Analysis.⁵ After considering PacifiCorp’s response,
9 Sierra Club’s reply, and PacifiCorp’s sur-reply, the ALJ issued a ruling on August 7, 2018,
10 appropriately maintaining PacifiCorp’s confidentiality designations for the Coal Analysis.
11 The ALJ found that, by establishing that the PVRR(d) inputs and results fall within the scope
12 of ORCP 36(C)(7) and are not publicly available, PacifiCorp met the two requirements under
13 the protective order for confidential treatment.⁶

14 In parallel proceedings, Sierra Club sought public disclosure of the unredacted Coal
15 Analysis by filing a Public Records Act request with the Washington Utilities and
16 Transportation Commission (WUTC) on July 13, 2018. PacifiCorp filed suit in Thurston
17 County Superior Court to enjoin the disclosure. On July 27, 2018, the Superior Court issued
18 a temporary restraining order preventing disclosure under RCW 80.04.095 because
19 PacifiCorp made a sufficient threshold showing that: (1) the redacted information in the Coal
20 Analysis “constitutes valuable commercial information, including trade secrets or
21 confidential marketing, cost, or financial information;” and (2) disclosure of the redacted

⁵ Sierra Club’s Written Objection to PacifiCorp’s Confidential Designations at 1 (Sierra Club Objection).

⁶ ALJ Ruling at 3-5.

1 information in the Coal Analysis “would result in private loss, including an unfair
2 competitive disadvantage for PacifiCorp.”⁷

3 The Superior Court subsequently heard PacifiCorp’s motion for a permanent
4 injunction on September 7, 2018. After reviewing declarations from multiple witnesses for
5 PacifiCorp and Sierra Club, the Superior Court granted PacifiCorp’s motion and permanently
6 enjoined disclosure of the unredacted Coal Analysis under RCW 80.04.095. The Superior
7 Court judge considered the impact of the ALJ Ruling, but decided not to apply collateral
8 estoppel because she found that RCW 80.04.095—the applicable statute in Washington—
9 imposed a higher standard to enjoin disclosure. The Superior Court judge then made
10 independent findings that PacifiCorp met this standard by establishing that the unredacted
11 Coal Analysis was valuable commercial information, the disclosure of which would cause
12 private loss to PacifiCorp.⁸

13 On September 28, 2018, 52 days after the ALJ Ruling, Sierra Club filed its “Appeal
14 of Administrative Law Judge August 7, 2018 Ruling re: Protective Order” (Appeal). That
15 same day, the Commission issued Order No. 18-360 in docket LC 70, outlining next steps for
16 development and review of revised Coal Analysis—and making clear that the Coal Analysis
17 that is the subject of Sierra Club’s Motion and Appeal will soon be superseded.

18 In a procedural ruling on October 4, 2018, the Commission notified Sierra Club that:
19 (1) an appeal of the ALJ Ruling must be filed under OAR 860-001-0110 as a request for

⁷ *In the Matter of PacifiCorp, dba Pacific Power, 2017 Integrated Resource Plan, LC 67, PacifiCorp’s Motion to Supplement the Record, Exh. 1, at 2-3 (July 31, 2018).*

⁸ The Superior Court judge issued the permanent injunction from the bench. The parties are awaiting receipt of the transcript to submit the final order memorializing the decision. In its Motion, Sierra Club claims that the court found that the public interest favored disclosure and PacifiCorp would not suffer substantial and irreparable harm from disclosure. Motion at 20. But, as is clear from the fact that the court enjoined disclosure, these findings are dicta. Sierra Club also omits the court’s observation that, based on how recent Washington case law has interpreted the public interest and harm requirements for public records act injunctions, virtually no information could now satisfy these requirements and be exempt.

1 certification; and (2) because a request for certification was due within 15 days of the ALJ
2 Ruling, Sierra Club would need to seek a waiver of that deadline under OAR 860-001-
3 0000(2) for the Commission to consider the merits of the request for certification.⁹ In that
4 same ruling, the Commission asked PacifiCorp to begin addressing in its response how it will
5 engage with the public on its revised Coal Analysis, balancing IRP Guideline 2’s
6 requirements for public involvement and for protection of confidential information.

7 On October 5, 2018, 59 days after the ALJ Ruling, Sierra Club filed a “Motion, under
8 OAR 860-001-000, For Reconsideration of August 7, 2018 Administrative Law Judge
9 Ruling” (Motion). To challenge the Commission’s procedural treatment of Sierra Club’s
10 Appeal as a request for certification, Sierra Club sought a waiver of the entire certification
11 rule, not just the 15-day deadline. Sierra Club argued that the Commission retained authority
12 over development and presentation of the Coal Analysis, so the Commission should hear
13 Sierra Club’s appeal without ALJ certification. In the alternative, Sierra Club requested a
14 waiver of the 15-day deadline.

15 **III. RESPONSE TO SIERRA CLUB MOTION FOR WAIVER OF THE**
16 **COMMISSION’S CERTIFICATION RULE AND 15-DAY FILING DEADLINE**

17
18 A. Sierra Club has not met the good cause requirement for waiver of the 15-day deadline
19 for certification of the ALJ Ruling.

20
21 Sierra Club has not explained why it failed to file for certification in a timely manner,
22 and why it did not seek a waiver of the 15-day deadline at an earlier date. Sierra Club cannot
23 claim in good faith that it was ignorant of the certification requirement before the ALJ’s
24 October 4, 2018 procedural ruling. In PacifiCorp’s reply brief in support of its request for a
25 permanent injunction, filed in Washington Superior Court on August 31, 2018, PacifiCorp

⁹ *In the Matters of PacifiCorp, dba Pacific Power, 2017 Integrated Resource Plan and 2019 Integrated Resource Plan*, Dockets LC 67, LC 70 Ruling (Oct. 4, 2018).

1 argued that the ALJ Ruling was preclusive. PacifiCorp noted that “Sierra Club did not seek
2 timely certification of the decision under the OPUC rules, and admittedly has not appealed
3 the OPUC decision, severely undermining its position that ‘finality’ is lacking.”¹⁰ Thus,
4 approximately one month in advance of Sierra Club filing its Appeal in Oregon, Sierra Club
5 had actual notice that it missed the certification deadline—but took no action.

6 Sierra Club argues in its Appeal that certification is “optional” because the rule states
7 that party “may” request certification. The rule’s optionality, however, relates to whether a
8 party chooses to appeal an ALJ ruling, not the procedural requirements for filing such an
9 appeal. Sierra Club’s argument that the Commission enacted a certification rule with
10 language that allows a party to freely bypass its requirements makes little sense. In this case,
11 Sierra Club elected not to file a request for certification.

12 Like all parties before the Commission, Sierra Club is charged with knowledge of the
13 Commission’s rules. Indeed, in an order addressing Sierra Club’s violation of the protective
14 order in LC 57, the Commission ordered Sierra Club to promptly conduct trainings and
15 certify that its legal staff understood the Commission’s procedural rules.¹¹ In that order, the
16 Commission noted that “Sierra Club has demonstrated a lack of familiarity with our rules in
17 other contexts beyond this particular dispute, including our filing deadlines and other
18 procedural matters.” With this history, the Commission should not excuse Sierra Club by
19 permitting a waiver of the filing deadline because Sierra Club was unaware of the
20 certification rule or incorrectly believed it was optional. To ensure robust and fair

¹⁰ PacifiCorp’s Reply in Support of Motion for Final Declaratory Relief and Permanent Injunction, Case No. 18-2-03640-34 at 2 (August 31, 2018).

¹¹ *In the Matter of Sierra Club, Regarding Violation of Protective Order No. 13-095*, Docket UM 1707, Order No. 14-392 (Nov. 14, 2014).

1 proceedings, the Commission should require that parties meet minimum standards of
2 responsibility and diligence.

3 B. Without attempting to establish good cause for missing the 15-day deadline to seek
4 certification, Sierra Club seeks a waiver of the entire certification rule.

5 Sierra Club proposes to waive the entire certification rule, including the 15-day
6 deadline. But absent application of the certification rule, there is no authority PacifiCorp can
7 identify by which Sierra Club can seek Commission review of the ALJ Ruling, and no
8 standards to govern such a review.

9 The procedural history of this matter is clear. Instead of filing for certification and
10 review of the ALJ Ruling, Sierra Club implemented a legal strategy to ignore the ALJ Ruling
11 by litigating its Public Records Act request in Washington. That was a mistake. After that
12 strategy failed, Sierra Club filed its late appeal in Oregon, in an attempt to resume its original
13 litigation. Neither ignorance of the certification rule nor time spent forum shopping
14 constitutes good cause for waiving the deadline for appealing the ALJ Ruling. Sierra Club's
15 Motion should be denied.

16 **IV. RESPONSE TO SIERRA CLUB APPEAL OF ALJ RULING**

17 Under OAR 860-001-0110, the ALJ must certify its ruling to the Commission if the
18 ruling may result in substantial detriment to the public interest or undue prejudice to a party,
19 or good cause exists for certification. Sierra Club has not addressed the certification standard
20 in its Motion or Appeal, nor has it established either of the required factors.

21 **A. The ALJ Ruling Applied the Correct Legal Standard for Reviewing Confidential**
22 **Designations under the Commission's Protective Order.**

23
24 Sierra Club argues that the ALJ Ruling was "standardless," but this is not true. The
25 ALJ applied the legal standard expressly set forth in the Commission's protective order for
26 determining whether PacifiCorp reasonably designated portions of the Coal Analysis as

1 confidential.¹² As stated in paragraph 2 of the protective order, the information must fall
2 within the scope of ORCP 36(C)(7) as a trade secret or other confidential research,
3 development, or commercial information, and must not be publicly available.

4 As specified in paragraph 9 of the protective order, the ALJ also looked to the
5 Uniform Trade Secrets Act, ORS 646.461(4), to determine whether PacifiCorp established
6 that the redacted information constitutes protected trade secrets. Specifically, the ALJ
7 reviewed whether the information derives actual or potential economic value from being held
8 confidentially, and whether the confidentiality of the information was reasonably
9 maintained.¹³

10 Notably, Sierra Club does not actually challenge the legal framework of the ALJ's
11 Ruling. Instead, Sierra Club challenges the ALJ's determination that PacifiCorp's response
12 satisfied the legal standard. Sierra Club claims that PacifiCorp did not identify the factual or
13 legal basis of its claim that the information constitutes trade secrets, and impermissibly relied
14 on broad allegations unsubstantiated by specific facts.¹⁴ As outlined below, Sierra Club's
15 sufficiency challenge ignores both the substantive content of PacifiCorp's briefs and the
16 findings in the ALJ Ruling.

17 In support of some of its arguments, Sierra Club attaches the declaration of Jeremy
18 Fisher, filed in Washington Superior Court.¹⁵ This declaration was not before the ALJ and
19 the Commission should not consider it here, especially because the Superior Court did not
20 find it dispositive. If the Commission does reopen the record to consider the declaration,

¹² ALJ Ruling at 3.

¹³ ALJ Ruling at 3-4.

¹⁴ Appeal at 5-6.

¹⁵ Appeal, Exhibit C.

1 however, it must also consider the reply declarations of Chad Teply and Seth Schwartz,
2 which the Superior Court relied upon to enjoin disclosure. PacifiCorp’s reply declarations
3 are attached as an exhibit to this response.

4 **B. PacifiCorp Met its Burden of Demonstrating with Specificity the Legal and**
5 **Factual Basis for Its Confidential Designations.**

6
7 In its response and sur-reply briefs, PacifiCorp demonstrated with specificity why it
8 designated the PVRR(d) results and inputs from the Coal Analysis as confidential.

9 First, PacifiCorp articulated the correct legal basis for its confidential designations,
10 mirroring the standard set forth in the Commission’s protective order and the ALJ Ruling.¹⁶
11 Indeed, the only case cited in Sierra Club’s Appeal, *Pfizer, Inc. v. Oregon Dep’t of Justice ex*
12 *rel. Kroger*, 254 Or App 144, 162 (2012), relies on *Citizens’ Util. Board v. Pub. Util.*
13 *Comm’n*, 128 Or App 650 (1994), the primary case PacifiCorp cited in its response and sur-
14 reply briefs.¹⁷

15 Second, contrary to Sierra Club’s claims, PacifiCorp addressed the redactions
16 separately, explaining that the redactions on pages five and nine of the presentation relate to
17 the PVRR(d) results, and the redaction on page seven relates to the underlying cost inputs
18 and assumptions.¹⁸ The ALJ Ruling also described the redacted information with specificity,
19 as follows: “(1) PVRR(d) results found on page 5; (2) an exemplary graph on page 7 to show
20 what type of information was included in the confidential workpapers supporting the coal
21 analysis; and (3) a description of the results and a description of the PVRR(d) results if both

¹⁶ PacifiCorp’s Response to Objection to PacifiCorp’s Confidential Designations, Docket LC 67, at 4 (July 16, 2018) (Response).

¹⁷ *Id.* at 5, 6, 8, 14; PacifiCorp’s Sur-Reply to Objection to PacifiCorp’s Confidential Designations, Docket LC 67 at 10-11 (July 26, 2018) (Sur-Reply).

¹⁸ Sur-Reply at 3, n.6, 9-10.

1 Jim Bridger Units 1 and 2 are retired, both on page 9.”¹⁹ Given the sparsity of the redactions
2 and their similarity, the analysis of the redactions was sufficiently separate and specific.

3 Third, PacifiCorp demonstrated that the PVRR(d) results and the underlying cost
4 assumptions are not public information known outside of PacifiCorp. This fact distinguishes
5 the *Pfizer* case cited by Sierra Club, where a key issue was whether the information had
6 already been made public.²⁰ PacifiCorp outlined its consistent efforts to “maintain the
7 secrecy” of the redacted information,²¹ explaining that the company has publicly released
8 PVRR(d) results of previous coal studies only where those studies are based on final,
9 comprehensive portfolio analyses that definitively and reliably inform the Company’s
10 resource planning process.²² Public disclosure of preliminary and incomplete coal studies,
11 like the Coal Analysis, could mislead, rather than inform, the public.

12 Sierra Club challenges the exempt nature of the Coal Analysis by recounting past
13 public disclosures by PacifiCorp and other energy companies related to cost analysis of coal
14 operations.²³ These disclosures are not analogous because they involve the final or near-final
15 results of decision-making quality analysis. Not one example concerns a preliminary or draft
16 analysis subject to infirmities and caveats like the Coal Analysis. As discussed in more detail
17 below, PacifiCorp is performing revised Coal Analysis to inform its continued IRP process,
18 and will reflect the final results in its public 2019 IRP filing in early 2019.

19 Fourth, PacifiCorp showed that disclosure of the PVRR(d) results and underlying
20 assumptions would seriously harm PacifiCorp and its customers because “other persons . . .

¹⁹ ALJ Ruling at 2.

²⁰ *Pfizer, Inc. v. Oregon Dep’t of Justice ex rel. Kroger*, 254 Or App 144, 162-165 (2012)

²¹ ORS 646.461(4).

²² Response at 6.

²³ Appeal at 16-17.

1 can obtain economic value from its disclosure or use.”²⁴ PacifiCorp did not rely on broad
2 allegations of harm; instead it provided numerous specific examples to show competitive
3 disadvantage, including the following:²⁵

- 4 • Disclosure of costs inputs and PVRR(d) results would disadvantage
5 PacifiCorp in continued negotiations for coal supply and delivery for its coal
6 generation plants, many of which are located in remote locations with limited
7 supply options.
8
- 9 • Disclosure would harm PacifiCorp’s negotiating position with federal and
10 state agencies responsible for determining the necessary emissions control
11 equipment at the individual coal units, and in contract negotiations with third-
12 party contractors to build and install any equipment necessary to meet
13 environmental mandates.
- 14 • Because regional wholesale power markets are impacted by the potential
15 closure of coal units and reduced power supply, the public release of
16 preliminary and incomplete PVRR(d) results would adversely impact
17 wholesale power markets if participants are led to believe that early
18 retirements will occur (or that assumed retirements will be delayed). There
19 could be market repercussions on prices, liquidity and depth. In addition,
20 release of the PVRR(d) results could cause concerns around reliability not
21 only for PacifiCorp, but for the broader Western Interconnection regarding
22 reliability services that these plants provide, such as frequency response and
23 voltage support, if the market infers that coal units may retire earlier than
24 currently expected.
25
- 26 • Disclosure would negatively impact PacifiCorp’s ability to maintain its
27 existing workforce and labor agreements at its coal plants.
- 28 • Disclosure of PVRR(d) results for the early retirement scenarios would hurt
29 PacifiCorp in potential discussions with other parties related to the sale of
30 PacifiCorp’s interest in any of its coal units or in the potential sale of assets or
31 equipment related to its coal plants.

32 The ALJ Ruling states that PacifiCorp provided “several reasons” why the PVRR(d)
33 inputs and results have economic value and could place the company at a competitive

²⁴ ORS 646.461(4); *CUB*, 128 Or. App. at 659 (examining “the value of the information to the business or its competitors” to establish trade secret). See Response at 6-7.

²⁵ Response at 7; Sur-Reply at 7-8.

1 disadvantage in actual or potential transactions.²⁶ In her Ruling, the ALJ focused on the first
2 two bullets listed above—the competitive disadvantage the company would suffer in
3 negotiations with environmental equipment and coal suppliers—and concluded that
4 PacifiCorp’s concerns were credible.²⁷ In its Appeal, Sierra Club contests this finding, but
5 raises no arguments other than those previously considered and rejected by the ALJ.²⁸

6 The ALJ also found that the redacted information in the Coal Analysis was non-
7 public information.²⁹ Sierra Club does not challenge this finding, which continues to hold
8 true given the Washington Superior Court’s order permanently enjoining disclosure.

9 In summary, the record supports the ALJ’s determination that “PacifiCorp has met its
10 burden of showing that disclosure of either inputs (that include long-term assumptions
11 developed by PacifiCorp) or the results (that show estimated costs and benefits of changing
12 the retirement date of individual coal units) would place the company at a competitive
13 disadvantage.”³⁰

14 **C. The ALJ Ruling is Consistent with the Public Interest.**

15 Sierra Club claims that allowing the ALJ Ruling to stand will incentivize PacifiCorp
16 and other utilities to over designate information as confidential.³¹ But the ALJ Ruling does
17 not signal a change in Commission policy. PacifiCorp’s approach to designation of
18 confidential information follows Commission precedent protecting the company’s economic
19 analysis and supply costs for its coal plants. The Commission has consistently recognized

²⁶ ALJ Ruling at 4.

²⁷ ALJ Ruling at 4-5.

²⁸ Compare Appeal at 8-10, 17-20 with Reply at 4-6, 8-11.

²⁹ ALJ Ruling at 5.

³⁰ ALJ Ruling at 5.

³¹ Appeal at 6.

1 the inherent sensitivity of this information and the risk to customers associated with public
2 disclosure.

3 For example, in the 2013 IRP, the Commission upheld the company’s confidential
4 designation of substantially similar coal plant PVRR(d) results over Sierra Club’s objection.
5 In that case, PacifiCorp designated a PowerPoint presentation used at a Commission
6 workshop as confidential in its entirety because it included the “company’s economic
7 analysis of emissions control investments” at its coal plants, which the company claimed
8 “qualif[ied] as protected trade secrets or other confidential research or commercial
9 information.”³² Sierra Club challenged the confidential designations as overbroad, but did
10 not challenge the specific confidential designation of the costs to build and install emission
11 control equipment and the “results of PacifiCorp’s economic analyses.”³³ Although the
12 Commission directed PacifiCorp to limit its confidential designations (similar to the limited
13 redactions reflected in the Coal Analysis),³⁴ it ultimately upheld the confidential designation
14 of PVRR(d) results.³⁵

³² *In the Matter of PacifiCorp, dba Pacific Power, 2013 Integrated Resource Plan*, Docket No. LC 57, Ruling at 1 (Oct. 17, 2014).

³³ *In the Matter of PacifiCorp, dba Pacific Power, 2013 Integrated Resource Plan*, Docket No. LC 57, Sierra Club Reply to PacifiCorp’s Redesignation of Workshop Presentation at 1-2 (Oct. 29, 2014) (“Sierra Club does not challenge PacifiCorp’s confidential designation in the August 6 presentation of (1) the expected costs to build and install pollution controls at Craig and Hayden, (2) the results of PacifiCorp’s economic analyses, or (3) the Company’s conclusions related to its legal obligations as a co-owner of Craig and Hayden.”).

³⁴ *In the Matter of PacifiCorp, dba Pacific Power, 2013 Integrated Resource Plan*, Docket No. LC 57, Ruling at 2 (Oct. 17, 2014).

³⁵ *In the Matter of PacifiCorp, dba Pacific Power, 2013 Integrated Resource Plan*, Docket No. LC 57, PacifiCorp’s Response to Ruling Requiring Redesignation of Workshop Presentation (Oct. 23, 2014) (specifically showing that PVRR(d) results were confidential); *In the Matter of PacifiCorp, dba Pacific Power, 2013 Integrated Resource Plan*, Docket No. LC 57, Ruling (Jan. 9, 2015) (approving redesignation of confidential information); *In the Matter of PacifiCorp, dba Pacific Power, 2013 Integrated Resource Plan*, Docket No. LC 57, Ruling (Mar. 3, 2015) (denying Sierra Club’s request for certification of redesignation ruling).

1 The company’s 2015 IRP included a specific volume (Volume III) describing
2 economic analysis related to the ongoing operation and economics of certain coal plants, as
3 required by the Commission in the 2013 IRP.³⁶ The PVRR(d) results described in Volume
4 III, and the underlying cost assumptions informing those results, were designated
5 confidential.³⁷ No party to the 2015 IRP or the 2015 IRP Update challenged the confidential
6 designation of the coal plant PVRR(d) results.³⁸

7 As the ALJ Ruling makes clear, the confidential designation of portions of the Coal
8 Analysis does not restrict Sierra Club and other parties from using the information in the IRP
9 process under the protective order.³⁹ Maintaining the confidential designations is reasonable,
10 given that disclosure could mislead the public, distort the power markets, impede
11 PacifiCorp’s ability to operate its coal plants, and cause serious harm to PacifiCorp and its
12 customers.

13 **V. RESPONSE TO COMMISSION REQUEST FOR INFORMATION**

14 In the ALJ’s procedural ruling issued on October 4, the Commission asked
15 PacifiCorp to provide information on: (1) how it plans to engage with the public on the
16 revised Coal Analysis; (2) how it will balance the requirements of IRP Guideline 2, which
17 call for public involvement in the preparation of the IRP and the protection of confidential

³⁶ *In the Matter of PacifiCorp, dba Pacific Power, 2013 Integrated Resource Plan*, Docket No. LC 57, Order No. 14-252 at 5 (July 8, 2014).

³⁷ *See, e.g.*, PacifiCorp’s 2015 Integrated Resource Plan, Volume III Coal Analysis at 19 (Mar. 31, 2015) (designating PVRR results for Wyodak plant confidential).

³⁸ Sierra Club did request that the Commission undertake a broad review of the general protective order to adopt terms similar to those used by the Federal Energy Regulatory Commission. But Sierra Club did not challenge any specific confidential designation. *In the Matter of PacifiCorp, dba Pacific Power, 2015 Integrated Resource Plan*, Docket No. LC 62, Ruling (Jan. 2, 2015).

³⁹ ALJ Ruling at 5.

1 information; and (3) whether PacifiCorp will publicly release PVRR(d) values or other
2 information from the revised Coal Analysis.⁴⁰

3 PacifiCorp's plans for public disclosure of the revised Coal Analysis should not be a
4 factor in determining whether it properly designated certain information confidential in the
5 original Coal Analysis. Nevertheless, PacifiCorp appreciates the opportunity to provide
6 information to the Commission about disclosure of the revised Coal Analysis in the future.
7 In its IRP public process, PacifiCorp strives to fairly balance transparency with the need to
8 protect the economic interests of PacifiCorp and its customers. This balancing process is
9 particularly complex when addressing economic analysis of coal resources, given the interest
10 of stakeholders and the sensitivity of the underlying information. PacifiCorp has
11 traditionally employed three general guidelines to address these competing issues in its IRP
12 process, and expects to continue to use this model for the 2019 IRP public process.

13 First, in all cases, PacifiCorp works to maintain the confidentiality of its underlying
14 coal cost inputs and assumptions. This is required to ensure that PacifiCorp can continue to
15 competitively operate and supply its coal facilities for the benefit of customers. As a general
16 matter, this means that the company will continue to designate portions of the company's
17 coal plant analysis and associated workpapers confidential.

18 Second, when the company's economic analysis of coal resources is preliminary,
19 incomplete, or illustrative, the Company designates the analysis and results confidential,
20 making it available to stakeholders under protective orders or non-disclosure agreements.
21 This approach allows the company to share the results of its ongoing analytical process with

⁴⁰ *In the Matters of PacifiCorp, dba Pacific Power, 2017 Integrated Resource Plan and 2019 Integrated Resource Plan*, Dockets LC 67, LC 70 Ruling (Oct. 4, 2018).

1 stakeholders, while protecting against the harm and confusion caused by public release of
2 studies that are not final or are otherwise insufficient for resource decision-making.

3 Third, when PacifiCorp’s economic analysis is final and is used to support the
4 company’s resource plan or resource decisions, the company makes the PVRR(d) results
5 public.

6 As applied to the revised Coal Analysis, these guidelines mean that PacifiCorp will
7 include final, non-confidential PVRR(d) results in its 2019 IRP, when it is filed in
8 approximately five months. PacifiCorp will continue to designate the inputs and assumptions
9 for the revised Coal Analysis confidential. Depending on the progress PacifiCorp makes in
10 the study process, PacifiCorp may be able to publicly release the PVRR(d) results of the
11 revised Coal Analysis in advance of the 2019 IRP filing. In any case, interim results will be
12 made available to stakeholders under the protective order in this docket.

13 Because the final results of the revised Coal Analysis will be available to the public in
14 early 2019, the public interest is not served by further litigation of this issue through
15 certification and appeal of the ALJ Ruling. Nor is it served by reversal of the ALJ Ruling
16 and release of preliminary and incomplete study results.


17

1

IV. CONCLUSION

2 Based on the foregoing, PacifiCorp respectfully requests that the Commission deny
3 Sierra Club's Motion for Waiver and Sierra Club's Appeal of the ALJ Ruling.

Respectfully submitted this 22nd day of October 2018.



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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

**LC 67
LC 70**

PACIFICORP

**Exhibit 1 to
PacifiCorp's Opposition to Sierra Club's Motion for
Waiver and Appeal of ALJ Ruling, and Response to
Commission Request for Additional Information**

Declarations of Chad Teply and Seth Schwartz

October 22, 2018

EXPEDITE (if filing within 5 court days of hearing)
 No Hearing Set
 Hearing is Set:
Date: Friday, September 7, 2018
Time: 9:00 A.M.
Judge/Calendar: Judge Schaller

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF THURSTON

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

Plaintiff,

vs.

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

Defendants.

No. 18-2-03640-34

DECLARATION OF CHAD TEPLY IN REPLY SUPPORTING PACIFICORP'S MOTION FOR FINAL DECLARATORY RELIEF AND PERMANENT INJUNCTION

I, Chad Teply, under penalty of perjury of the laws of the State of Washington, declare as follows:

1. I previously submitted a declaration in support of PacifiCorp's, d/b/a/ Pacific Power & Light Company (PacifiCorp), Motion for Permanent Injunction. My qualifications are unchanged from what I outlined in my initial declaration.

2. The purpose of my reply declaration is to refute Sierra Club's position that PacifiCorp's "Unit-by-Unit Coal Studies, Confidential Workshop, 2019 IRP Public Input Meeting – June 28, 2018" (hereafter referred to as the Coal Analysis) (1) is not valuable

1 commercial information, (2) disclosure would not cause loss or substantial and irreparable
2 harm to PacifiCorp and its customers, and (3) disclosure is in the public interest. To be clear,
3 PacifiCorp conducted the Coal Analysis at the direction of the Public Utility Commission of
4 Oregon (OPUC), not Sierra Club or the WUTC. The WUTC has taken the position that it is
5 just a records custodian in this case, and has declined to make a decision about the
6 confidentiality of the Coal Analysis. The OPUC is therefore the entity best qualified to judge
7 the confidentiality of this information and the potential harm associated with its public release.
8 An OPUC administrative law judge rejected Sierra Club's challenge to its confidential
9 treatment, and Sierra Club did not seek certification of this ruling to the Commission by the
10 deadline. As of the date of my declaration, Sierra Club has not filed for reconsideration or
11 judicial review of the OPUC's final decision.

12 3. I have reviewed the declarations from Sierra Club's witnesses. Sierra Club's
13 witnesses are a technical analyst, Dr. Jeremy Fisher, an environmental organizer, Ms. Cesia
14 Kearns, and a retired Environmental Protection Agency (EPA) regional director, Dr. Al
15 Armendariz. None of these individuals referenced or substantiated any direct experience with
16 the complex commercial issues related to operation of a fleet of coal-fired electric plants,
17 including contracting for fuel and transportation, negotiating environmental compliance
18 alternatives, or managing labor contracts and employee transition plans. Nor do they appear
19 to have any expertise in running electric utilities, including making energy purchases and sales
20 in short and long-term energy markets to balance customer loads and resources.

21 4. My opinions on the loss and harm PacifiCorp will suffer upon release of the
22 Coal Analysis are informed by my nearly twenty years of experience in power plant operations,
23 maintenance, construction, compliance, strategic planning, and stakeholder engagement. I
24 also have direct experience overseeing the early retirement of one of PacifiCorp's coal plants,
25 the Carbon plant, and participating in negotiation of alternative environmental compliance
26 outcomes for the Company's Naughton Unit 3, Cholla Unit 4, and Craig Unit 2, as examples.

1 5. Contrary to Sierra Club’s insinuations, PacifiCorp is actively and transparently
2 managing its transition from coal-fired generation to natural gas and renewable energy
3 facilities. The company’s preferred portfolio in its most recent Integrated Resource Plan (IRP)
4 reflects a plan to reduce PacifiCorp’s coal capacity by thousands of megawatts between now
5 and 2036. In each planning cycle, the company refines its plan for coal plant retirements to
6 account for new market trends, environmental laws and regulations, and other relevant data.
7 Virtually all of the information PacifiCorp develops and shares in its IRP public process is
8 non-confidential. When PacifiCorp’s analysis reflects confidential information, such as the
9 Coal Analysis, the company does not “hide” the information as Sierra Club alleges. Instead,
10 to balance transparency with the need to protect the economic interests of PacifiCorp and its
11 customers, it asks stakeholders to sign protective orders or non-disclosure agreements before
12 sharing the confidential information. IRP stakeholders include state regulatory staff, state
13 consumer advocacy staff, customer-sponsored advocacy groups, environmental advocacy
14 groups, resource advocacy groups, resource developers, and customers.

15 6. In her declaration, Cesia Kearns contends that she could not attend the meeting
16 where the Coal Analysis was presented because Sierra Club limits the number of employees
17 who may sign a confidentiality agreement in a Commission proceeding. To be clear,
18 PacifiCorp did not prevent Ms. Kearns from executing the confidentiality agreement and
19 participating in the meeting.

20 7. PacifiCorp is currently engaged in additional coal retirement studies for its
21 2019 IRP. These studies will be much more comprehensive and complete than the draft Coal
22 Analysis Sierra Club seeks to publicize through this litigation, and the studies are certain to
23 produce different results in terms of the economics of early plant retirement. The company
24 plans to reflect the results of these studies in its 2019 IRP, which it expects to file after the end
25 of the first quarter 2019, maintaining confidentiality as required to protect sensitive inputs and
26 assumptions.

1 8. Dr. Fisher contends that information about early plant retirement would not
2 impact markets in a manner that harms PacifiCorp because PacifiCorp's energy purchases
3 represent a relatively small amount of energy transacted by a large number of sellers in a fluid
4 market. (Fisher Decl. ¶¶ 41-43.) This is incorrect. Depending on counterparty credit exposure
5 on a given day and the level of sellers' activity, the number of sellers with whom PacifiCorp
6 is able to transact is often quite small. And, as with many commodity markets, fundamentals
7 are only one component that influences prices. Speculation can have a significant effect on
8 prices and has generated enormous volatility in markets. PacifiCorp maintains an active energy
9 price hedging program on a rolling, 36-month basis, and speculation on future plant closures
10 would result in increased forward energy prices and higher energy costs for PacifiCorp
11 customers. This is especially true when the speculation involves multiple 300 MW-to-500
12 MW plants, without an orderly replacement strategy.

13 9. Dr. Fisher contends that PVR(d) results are important in long-term planning,
14 but not the type of information that influences day-to-day market transactions. (Fisher Decl.
15 ¶ 7.) He also contends that there is no economic value to the Coal Analysis, because it is
16 preliminary and others could recreate it. (Fisher Decl. ¶ 30.) But Dr. Fisher acknowledges
17 that if the company's PVR(d) results show that a plant is potentially economic to operate,
18 one of its mine-mouth suppliers might react by charging a higher price. (Fisher Decl. ¶ 33.)
19 Based on my experience, if PacifiCorp's PVR(d) results demonstrate that a coal unit is
20 potentially uneconomic to operate and might therefore retire earlier than planned, this will
21 influence near-term day-to-day market transactions related to operation of that plant,
22 producing higher costs to the company and its customers. For example, plant suppliers will
23 likely refuse to enter into specified agreements with favorable prices because of concerns about
24 plant longevity.

25 10. Based on my previous experience with early plant retirements, it is critical that
26 PacifiCorp engage in timely and accurate communication with all affected parties. As soon as

1 the company has thoroughly analyzed and makes a decision that it will accelerate a plant
2 retirement date and close it in the foreseeable future (such as the hypothetical 2022 date used
3 in the Coal Analysis), the company initiates meetings with state, community and labor leaders
4 to begin mitigating the impacts associated with plant closure. For this reason, PacifiCorp
5 would never publicly prematurely release partial or incomplete studies with accelerated plant
6 retirement dates. This does not represent an unreasonable “desire to control the narrative” or
7 keep information away from stakeholders as Dr. Fisher alleges. (Fisher Decl. ¶ 40.) Nor does
8 it deprive PacifiCorp’s workforce and communities of the benefits of the PacifiCorp’s forward
9 planning. (Fisher ¶ 46.) Rather it is a responsible approach to partnering with our communities
10 and employees. A partial or incomplete study could wrongly suggest that a plant retirement is
11 imminent, even though in the final analysis, continued operation of the plant is economic.
12 Unfortunately, by the time the final analysis is published, the damage associated with
13 premature release of incorrect information is likely to have occurred—including changes in
14 the markets. The fact that the Coal Analysis will be augmented during the 2019 IRP analysis
15 does not take away the harm that its release would cause now to PacifiCorp and its customers.
16 (Fisher Decl. ¶39). It just means that it is not in the public interest to release the preliminary
17 information now, with the attendant negative consequences, when the final information will
18 be reflected in PacifiCorp’s 2019 IRP in approximately 6 months.

19 11. The Coal Analysis was a planning exercise requested by the Public Utility
20 Commission of Oregon—not Sierra Club. It was never envisioned to be a decision-making
21 study because, by definition, it was partial and incomplete. Dr. Fisher cites numerous other
22 cases where utilities—including PacifiCorp—have filed PVRR(d) results in a non-confidential
23 way. (Fisher Decl. ¶¶ 13-28, 48.) Each of those cases is readily distinguishable because the
24 PVRR(d) results were final or near-final results from a decision-making study. As noted
25 above, PacifiCorp will include its final PVRR(d) results on the economics of its coal fleet in
26 its 2019 IRP in a manner consistent with the cases cited by Dr. Fisher.

1 12. Dr. Fisher states he is unaware of any ongoing environmental negotiations with
2 agencies and regulators in which PacifiCorp is engaged. (Fisher ¶ 50.) But in my initial
3 declaration, I explained that the company was actively engaged in on-going rulemaking and
4 litigation related to its compliance obligations, and is currently negotiating with state and
5 federal agencies, partner plant owners, and other stakeholders related to specific coal unit
6 compliance obligations. Exhibit 3 to my initial declaration is an excerpt from the 2017 IRP
7 describing the company's current engagement with regulators and stakeholders regarding the
8 need for emission control investments at various coal plants. Dr. Fisher overlooks these
9 aspects of my declaration.

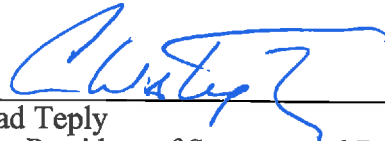
10 13. In his declaration, Al Armendariz claims that the PVRR(d) results are irrelevant
11 to environmental compliance negotiations with regulators. (Armendariz Decl. ¶¶ 6-7.) Dr.
12 Armendariz states that, in his experience in a different EPA region, regulators focus solely on
13 the cost-effectiveness of environmental equipment, not on the fundamental economics of the
14 plant. In my experience with the EPA and state agencies in the regions where PacifiCorp's
15 coal plants are located, the baseline economics of the plant, community impacts, and
16 thoughtful transition plans are key building blocks in any compliance negotiation, beyond the
17 simple calculation of environmental equipment cost-effectiveness. Simply put, no compliance
18 plan can be developed without a shared, accurate understanding of these issues.

19 14. While Dr. Fisher concedes that the Coal Analysis contains information about
20 the costs of installation of environmental compliance equipment, he dismisses PacifiCorp's
21 claim that disclosure of this information will disadvantage the company in negotiations with
22 contractors who supply and install this equipment. (Fisher ¶ 44.) As noted in my initial
23 declaration, the OPUC specifically found otherwise.¹ Dr. Fisher does not acknowledge the
24 OPUC's finding or attempt to reconcile his position with it.

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26 ¹ *In the Matter of PacifiCorp, dba Pacific Power, 2017 Integrated Resource Plan and 2019 Integrated
Resource Plan*, OPUC Docket Nos. LC 67 and LC 70, Ruling at 4 (August 7, 2018).

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EXECUTED 31st day of August, 2018 at Salt Lake City, Utah.



Chad Teply
Vice President of Strategy and Development
PacifiCorp

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 31st day of August, 2018, I arranged for service of the foregoing
**DECLARATION OF CHAD TEPLY IN REPLY SUPPORTING PACIFICORP'S
MOTION FOR FINAL DECLARATORY RELIEF AND PERMANENT INJUNCTION**
via E-Mail to the parties to this action as follows:

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EXPEDITE (if filing within 5 court days of hearing)
 No Hearing Set
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Date: Friday, September 7, 2018
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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

DECLARATION OF SETH SCHWARTZ IN REPLY SUPPORTING PACIFICORP'S MOTION FOR DECLARATORY RELIEF AND PERMANENT INJUNCTION

I, Seth Schwartz, under penalty of perjury of the laws of the State of Washington, declare as follows:

1. I previously submitted a declaration in support of PacifiCorp's, d/b/a/ Pacific Power & Light Company (PacifiCorp), Motion for Permanent Injunction. My qualifications are unchanged from what I outlined in my initial declaration.

2. The purpose of my reply declaration is to refute Sierra Club's position that PacifiCorp's "Unit-by-Unit Coal Studies, Confidential Workshop, 2019 IRP Public Input Meeting – June 28, 2018" (hereafter referred to as the Coal Analysis) (1) is not valuable

1 commercial information, (2) disclosure would not cause loss or substantial and irreparable
2 harm to PacifiCorp and its customers, and (3) disclosure is in the public interest. My reply
3 declaration is in response to declarations from Sierra Club's witness Dr. Jeremy Fisher.

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5 3. Dr. Fisher concedes that he can "identify one instance in which a counterparty
6 or competitor could harness a specific PVR(d) result to the detriment of PacifiCorp
7 customers."¹ This circumstance is where "a coal operator that has physically exclusive
8 monopoly to provide coal (i.e. minemouth) with PacifiCorp as the operator might be able to
9 harness positive economic results to increase coal prices. Of PacifiCorp's 22 coal units, only
10 seven units were analyzed that potentially fall into this category (Jim Bridger 1-4, Naughton
11 1-2, and Wyodak)."² However, Dr. Fisher dismisses the potential harm to PacifiCorp and its
12 customers by claiming that any counterparty has the technology and data to replicate
13 PacifiCorp's findings.³
14

15 4. First, it is not appropriate for Dr. Fisher to limit the instances where a supplier
16 to PacifiCorp's plants could take advantage of the disclosure of the PVR(d) to only plants
17 where PacifiCorp "is the operator". This filter eliminates 7 of PacifiCorp's 22 coal units
18 studied in the Coal Analysis (Colstrip, Hayden, Craig and Cholla plants). A coal supplier with
19 a "physically exclusive monopoly" to supply these plants would benefit from the disclosure of
20 PacifiCorp's unit-specific economic value at plants operated by other owners just as much as
21 at plants operated by PacifiCorp.
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25 ¹ Fisher Decl. at 13.

² Id.

26 ³ Fisher Decl. at 14.

1 5. Second, Dr. Fisher is overly-restrictive in his definition of situations where the
2 incumbent coal or transportation supplier would gain significant economic advantage due to
3 disclosure of the Coal Information. He limits the “narrow set of circumstances” to a situation
4 where a coal operator “has physically exclusive monopoly to provide coal”, using this
5 definition to exclude the potential harm at the Dave Johnston 1-4, Hunter 1-3 and Huntington
6 1-2 coal units. However, these plants each have one economically dominant supplier of coal
7 (at Hunter and Huntington) or rail transportation (Dave Johnston). The barriers to economic
8 competition at these plants are very high and the market is illiquid, which limits PacifiCorp’s
9 competitive supply from alternate sources. These suppliers could derive similar economic
10 advantage as a supplier with a “physically exclusive monopoly.” It is a simple fact that every
11 one of PacifiCorp’s coal units has very limited options for coal and coal transportation and
12 PacifiCorp has always had to negotiate contracts with suppliers under these constraints.
13 PacifiCorp’s situation is different from the vast majority of utilities in the United States, for
14 whom coal procurement is generally based upon the commodity market prices. All of
15 PacifiCorp’s coal-fired power plants were originally developed with sole supply sources
16 (largely minemouth, as characterized by Dr. Fisher) with prices set based upon the cost of
17 production, not commodity market prices. Even though some of these plants have developed
18 alternate supply sources over time, the supply options are highly constrained and the impact
19 of disclosure of the Coal Information on PacifiCorp is not the same as for other utilities which
20 procure coal at commodity market prices.
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24 6. Dr. Fisher is wrong in his opinion that PacifiCorp’s coal suppliers can “replicate
25 PacifiCorp’s findings” based on public information. My company is regularly hired by market
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1 participants, including coal suppliers and coal transportation companies, to perform similar
2 analyses projecting operating costs and revenues for power plants to perform “due diligence”
3 in negotiating multi-million-dollar contracts.” These PVRR analyses are based upon
4 *projections* of future costs and revenues, including coal prices, power market prices, natural
5 gas prices, performance of generating units, and operating costs. These future costs are not
6 known with certainty, even if historical data were publicly available. Companies like mine
7 know that future costs and prices are inherently uncertain and prepare best estimates to assist
8 clients in negotiating the best deals. It would be much more valuable to a coal supplier to
9 know PacifiCorp’s projections of future costs and the PVRR than to prepare an independent
10 forecast, because that would inform the supplier of the prices which PacifiCorp would be
11 willing to pay. The disclosure of the Coal Information would provide the suppliers with this
12 economic advantage in negotiations which could not be duplicated by an independent analysis.

15 7. Dr. Fisher is also incorrect in his claim that my opinion that coal suppliers “will
16 use the disclosed information to calculate the alternative cost of coal available to PacifiCorp
17 is without merit or basis.”⁴ While it is true that the *existing* delivered cost of coal to regulated
18 utilities is disclosed publicly on the EIA Form 923, it is not true that the *alternative* cost of
19 coal is publicly disclosed. PacifiCorp’s alternative cost of coal is coal that it is not currently
20 purchasing and, as a result, cannot be disclosed publicly on Form 923. The alternative cost is
21 something that only PacifiCorp knows with certainty and the existing suppliers can only
22 estimate. Disclosure of PacifiCorp’s cost alternatives would damage PacifiCorp’s negotiating
23 position and would lead to higher costs.
24

26 ⁴ Fisher Decl. at 15.

1 8. Dr. Fisher cites the example of NIPSCO, a regulated utility in Indiana, who
2 disclosed to potentially affected employees that some of its coal units might close prior to the
3 release of its IRP. Dr. Fisher opines that “Like PacifiCorp’s coal units, the units identified by
4 NIPSCO in their 2016 IRP are in rural areas and provide local employment.” Dr. Fisher
5 obviously has no idea as to how remote the locations are for many of PacifiCorp’s power plants
6 and the associated coal mines. NIPSCO’s power plants are in northern Indiana, close to the
7 heart of American steel manufacturing in Gary, Indiana Harbor and Michigan City, Indiana.
8 For example, NIPSCO’s Bailly plant is located in Porter County, with 2010 population of
9 164,343.⁵ The State of Wyoming (where 4 of PacifiCorp’s plants are located) has the lowest
10 population density of any state other than Alaska. The four Wyoming counties where
11 PacifiCorp’s plants are located had 2010 population ranging from 13,833 to 46,133. The
12 closing of the power plants and mines in these remote areas would cause much of the workforce
13 to move to find alternate employment. If there is a premature announcement of potential
14 closure, it could be highly disruptive to the ability of the mines and plants to maintain a
15 workforce.
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18 9. It is ironic that Dr. Fisher chose NIPSCO as his example of how disclosure of
19 potential closure was not disruptive to maintaining a workforce in a remote area. NIPSCO
20 was the plaintiff in a well-known court case with its coal supplier based in a remote area of
21 Carbon County, Wyoming. When NIPSCO threatened to terminate (breach) its long-term coal
22 contract with Carbon County Coal Company, the coal supplier obtained a temporary
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26 ⁵ US Census at https://www.census.gov/data/datasets/2017/demo/popest/counties-total.html#par_textimage_70769902

1 restraining order on the basis that, if NIPSCO stopped deliveries during the dispute, the
2 company would be irreparably harmed by the loss of its workforce. While the coal company
3 prevailed in litigation over the breach of contract, it failed to obtain specific performance to
4 force NIPSCO to continue purchasing coal, only receiving monetary damages of \$181
5 million.⁶ As a result, the mine closed and the population of Hanna, Wyoming and the
6 surrounding area dropped sharply. The NIPSCO v. Carbon County litigation is an example of
7 how the threat of closure of a coal mine in the remote areas of Wyoming can cause actual
8 damages to the supplier and the community.
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10 EXECUTED 31th day of August, 2018 at Dickerson, Maryland.

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14 _____
15 Seth Schwartz
16 President
17 Energy Ventures Analysis, Inc.
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26 ⁶ See Northern Indiana Public Service Co. v. Carbon County Coal Co. 799 F.2d 265
(7th Circuit 1986) at <https://law.justia.com/cases/federal/appellate-courts/F2/799/265/117938/>

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 31st day of August, 2018, I arranged for service of the foregoing
**DECLARATION OF SETH SCHWARTZ IN REPLY SUPPORTING PACIFICORP'S
MOTION FOR DECLARATORY RELIEF AND PERMANENT INJUNCTION** via E-Mail to the parties to this action as follows:

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