



April 10, 2015

Via Electronic Filing and FedEx

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

Re: Docket No. UM 1712: Sierra Club's Objections to PacifiCorp and Citizens'
Utility Board's Stipulation

Please find enclosed Sierra Club's Objections to PacifiCorp and Citizens' Utility Board's Stipulation in the above-referenced docket.

The redacted version of this filing has been e-filed with the Commission and served upon parties via email. The confidential version of this filing is being filed with the Commission and served pursuant to Protective Order No. 14-431 upon all eligible party representatives via FedEx.

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

Respectfully submitted,

/s/ Derek Nelson

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**
UM 1712

In the Matter of

PACIFICORP, dba PACIFIC POWER,
Application for Approval of Deer Creek Mine
Transaction

SIERRA CLUB’S OBJECTIONS TO
PACIFICORP AND CITIZENS’
UTILITY BOARD’S STIPULATION

In accordance with OAR 860-001-0350(8) and the ruling issued on April 2, 2015 by Administrative Law Judge (“ALJ”) Allan Arlow in the above-captioned docket, Sierra Club hereby submits its objections to the March 25, 2015 Stipulation between PacifiCorp and the Citizens’ Utility Board (“CUB”). Sierra Club objects to paragraph 9 of the Stipulation, which asserts, *inter alia*, that the decision to enter into the Huntington coal supply agreement (“Huntington CSA”) was prudent. Sierra Club takes no position on the other provisions of the Stipulation.

Paragraph 9 of the stipulations states: “The Settling Parties agree that the decision to enter into the Transaction including the decisions to ... enter into the new and amended CSAs for the Huntington and Hunter plants (respectively)-was prudent.” Sierra Club objects to this provision because PacifiCorp and CUB have not demonstrated that the Huntington CSA is prudent.

Sierra Club’s direct testimony in this proceeding asserted that the Company failed to demonstrate that the long-term coal supply agreement for the Huntington coal plan is in the best interests of ratepayers. Specifically, the 15-year term of the Huntington CSA puts ratepayers at

risk of incurring substantial contract damages if the Huntington coal plant becomes uneconomic before the expiration of the agreement in 2029. The level of contract damages under the Huntington CSA could exceed [REDACTED] if the Huntington plant retires and the Company is unable to put to use the minimum amount of coal required by the agreement.¹ This downside risk substantially outweighs the [REDACTED] estimated present value revenue requirement benefit of securing somewhat lower coal pricing in the 15-year take-or-pay contract compared to flexibly buying coal on the open market.² Exposing customers to this risk is not prudent unless the Company agrees to - or the Commission imposes - protections for ratepayers.

PacifiCorp asserted in its direct testimony that customers would receive a level of protection for long-term contract liabilities in the Huntington CSA due to an environmental termination provision that would allow the Company to avoid the minimum take obligation if an environmental law, regulation or related settlement, “affect[ed] the Company’s ability to burn coal” at Huntington.³ In response testimony, all of the non-Company parties - including CUB - raised concerns about the ambiguity of this environmental termination provisions.⁴ CUB testified that the contract would not be prudent if it did not protect customers “from paying for take or pay charges if the plant is shut down or converted to gas for economic reasons that are caused by environmental regulations.”⁵ The existence of the take-or-pay contract also creates a risk that PacifiCorp may decide to operate the Huntington coal plant under otherwise uneconomic

¹ Sierra Club/100, Fisher/14.

² *Id.* at 8, Table 1.

³ PAC/100, Crane/13.

⁴ Staff/300, Crider/6-7; CUB/100, Jenks-McGovern/10-11; Sierra Club/100, Fisher/15-20; ICNU/100, Mullins/29-30.

⁵ CUB/100, Jenks-McGovern/13.

conditions because the liabilities of the take-or-pay contract could tip the scale in favor of keeping the plant open compared to retiring it.⁶ Sierra Club recommended and Staff supported four conditions that the Commission could impose to protect customers: (1) the Company must continue to model the operation of Huntington with the assumption that no penalties are incurred for early termination of the CSA; (2) the Company commits to hold ratepayers harmless for any and all penalties resulting from an early exit from the CSA; (3) the Company commits to operational modeling of the Huntington plant using only the variable cost of fuel as represented in the Huntington CSA; and (4) the Company commits to assess the forward-looking economics of the Huntington units when capital expenditures in excess of \$25 million are planned.⁷

With these protections in place, Sierra Club would not object to a finding that the Huntington CSA is prudent. However, the Stipulation submitted by PacifiCorp and CUB does not impose any of these recommended protections. Instead, PacifiCorp and CUB relied on the Company's reply testimony to justify their position that the Huntington CSA provides adequate ratepayer protection.⁸

Sierra Club acknowledges that the Company's reply testimony addressed in greater detail the environmental termination provisions of the Huntington CSA. PacifiCorp witness Cindy Crane testified as follows:

Q. Would Article 8 allow the Company to terminate the CSA if an environmental requirement made continued operation of Huntington uneconomic?

⁶ Sierra Club/100, Fisher/11.

⁷ Sierra Club/100, Fisher/30-31; Staff/600, Crider/8.

⁸ Joint Brief in Support of Stipulation at 8.

A. Yes. The Company intended Article 8 to address a scenario where an environmental requirement made the continued operation of the plant as a coal-fired facility uneconomic, and the Company made this intent clear during its negotiations with Bowie.⁹

The Company further stated its intention to model the forward-looking economics of Huntington based on the assumption that it will be able to terminate the Huntington CSA if the Huntington coal plant becomes uneconomic:

Because the Company can exercise its termination rights if it becomes uneconomic to burn coal at Huntington, there is no incentive to continue burning coal when it is uneconomic to do so and the Company's options are not limited. Furthermore, the Company will conduct its future planning based on its understanding of Article 8.¹⁰

This testimony was apparently sufficient to satisfy CUB's concerns about the prudence of the Huntington CSA. Sierra Club does not share CUB's confidence based on the record as it currently stands. Sierra Club certainly appreciates the reply testimony submitted by PacifiCorp and acknowledges that if the contract ultimately operates as Ms. Crane has testified, then customers should be adequately protected from long-term contract costs in the event it becomes preferable to retire Huntington early. However, the Stipulation is silent with respect to the conditions asserted by Ms. Crane and does not create any binding obligations that would protect ratepayers in the event that take-or-pay requirements are triggered in the future.

Sierra Club is concerned that the Stipulation, if approved without condition, could be interpreted at a later date to insulate PacifiCorp from any future review of costs related to the take-or-pay requirements in the Huntington CSA if the plant does in fact close before 2029.

⁹ PAC/500, Crane/6.

¹⁰ *Id.* at 7.

Notwithstanding Ms. Crane's assertions about the intentions of the Company with respect to the take-or-pay provisions, Sierra Club stands by its contention that the Huntington CSA is not prudent unless customers are protected from long-term contract liabilities. For example, Bowie may disagree with PacifiCorp's interpretation of the contract and could sue for damages if Huntington closes before 2029. If Bowie is successful in such a claim, ratepayers should not be on the hook for the long-term contract damages agreed to by the Company. Sierra Club therefore recommends that the Commission condition any approval of the Stipulation on a clear directive that ratepayers will not assume the risk of penalties or damages from the take-or-pay requirements of the Huntington CSA. Given the confidence with which PacifiCorp asserted in reply testimony that it can exercise its termination rights if it becomes uneconomic to burn coal at Huntington, such conditions should be neither objectionable nor burdensome to the Company.

Dated: April 10, 2015

Respectfully submitted,

/s/ Travis Ritchie

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 2015, I caused to be served the foregoing SIERRA CLUB'S OBJECTIONS TO PACIFICORP AND CITIZENS' UTILITY BOARD'S STIPULATION upon all party representatives on the official service list for this proceeding via electronic mail. The confidential version of this filing is being served pursuant to Protective Order No. 14-431 upon all eligible party representatives via FedEx.

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Dated this 10th day of April, 2015 at San Francisco, CA.

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