

MENZA Candice

From: GRANT Michael
Sent: Tuesday, September 02, 2014 10:52 AM
To: MENZA Candice
Subject: FW: Sierra Club's Notice of Challenge of Designation of Confidential Information - Addendum

For docketing in new UM.

From: GRANT Michael
Sent: Wednesday, August 20, 2014 7:27 AM
To: Wallace, Sarah; 'Gloria Smith'
Subject: RE: Sierra Club's Notice of Challenge of Designation of Confidential Information - Addendum

Sierra Club has challenged the confidentiality designation of the written presentation and oral discussion at the Aug 6 workshop. As provided by the protective order, the parties are directed to work informally to help resolve questions as to the designation and challenge. If the matter cannot be resolved informally, then Sierra Club may file a written motion.

At this time, PacifiCorp need not make the filing identified in my first email to defend the designation of the workshop presentation and discussion, but must work informally with Sierra Club to answer any questions about PacifiCorp's charge that the data requests disclose confidential information. And because PacifiCorp has not designated Sierra Club's data request as confidential - but rather claims it contains confidential information, I affirm Ms Wallace's statement in the first sentence of her email.

Finally, I again confirm the statement in my first email that the question of whether information was properly designated is separate and distinct from the question whether Sierra Club improperly used or disclosed designated information.

From: Wallace, Sarah [Sarah.Wallace@pacificorp.com]
Sent: Monday, August 18, 2014 5:38 PM
To: GRANT Michael; 'Gloria Smith'
Subject: RE: Sierra Club's Notice of Challenge of Designation of Confidential Information - Addendum

Judge Grant—

To clarify, based on your second email below, PacifiCorp does *not* need to file something defending the designation of Sierra Club's data requests as confidential, correct?

In addition, PacifiCorp respectfully requests that any attempt by Sierra Club to challenge the confidentiality designation of the written presentation and oral discussion at the August 6 workshop be delayed until after the Commission has determined if Sierra Club has violated the very order that it now seeks to enforce. Furthermore, I am assuming that Sierra Club is required to follow the procedures outlined in the protective order if it chooses to challenge PacifiCorp's designation—is that correct? Those procedures (outlined in paragraph 15) require an attempt to informally resolve the matter and a written objection that "identifies the information in dispute."

PacifiCorp also asks the Commission to clarify that any dispute over whether the information was properly designated is *separate and distinct* from the inquiry into the violation of the protective order, as articulated on the record during the conference call this morning and as stated in your first email.

We are available to discuss this evening if necessary given your schedule.

Thank you so much,
Sarah

From: GRANT Michael [<mailto:michael.grant@state.or.us>]
Sent: Monday, August 18, 2014 5:15 PM
To: 'Gloria Smith'
Cc: Wallace, Sarah
Subject: RE: Sierra Club's Notice of Challenge of Designation of Confidential Information - Addendum

Upon rereading Sierra Club's email I feel the need to address Sierra Club's statement that it "hereby challenges PacifiCorp's 'designation' of confidential all information contained in Sierra Club's data requests under OAR 860-001-0080(2)(d)." I want to clarify that PacifiCorp has not "designated" information in the data requests as confidential. Rather, it designated the information in the presentation to the Commissioners, as well as statements made during that presentation, as confidential.

PacifiCorp now contends that the data requests contained information designated as confidential.

It appears that Sierra Club may have questions as to what information in its data requests is a concern to PacifiCorp. I ask the parties to work informally to help clarify any confusion. Indeed, the Protective Order requires parties to work informally to resolve such disputes under Paragraph 11.

Michael Grant
Chief Administrative Law Judge
Public Utility Commission of Oregon
(503) 378-6102

From: GRANT Michael
Sent: Monday, August 18, 2014 5:03 PM
To: 'Gloria Smith'
Cc: Wallace, Sarah
Subject: RE: Sierra Club's Notice of Challenge of Designation of Confidential Information

I will be out of the office from Aug 19-26 with limited email access. To help clarify things, I provide this quick response.

As I stated today, any party has the right to challenge whether information has been properly designated under a protective order. Sierra Club has now invoked that right, and now PacifiCorp bears the burden of establishing that the designated information falls within the scope of ORCP 36(C)(7). Under Paragraph 15 of Order No. 13-095, PacifiCorp has 7 days to file a response defending its designation.

That inquiry, however, is separate and distinct from the current inquiry as to whether Sierra Club used or disclosed information designated as confidential under the protective order. In this pending matter, the question focuses on the use of the designated information, not whether the information was properly designated. A party may violate the terms of a protective order by disclosing designated information—even if it is later determined that the information disclosed was not properly designated. The protective order forbids a party from using or disclosing *designated* information for purposes other than the pending proceeding. Again, a party may challenge the designation, but improperly using or disclosing the information before a challenge remains a violation of the protective order.

Michael Grant

Chief Administrative Law Judge
Public Utility Commission of Oregon
(503) 378-6102

From: Gloria Smith [<mailto:gloria.smith@sierraclub.org>]

Sent: Monday, August 18, 2014 4:44 PM

To: GRANT Michael

Cc: Wallace, Sarah

Subject: Sierra Club's Notice of Challenge of Designation of Confidential Information

After further consideration, Sierra Club realizes that we need further information from PacifiCorp to understand the company's allegations that Sierra Club disclosed or used confidential information in the data requests at issue. We anticipated walking you through each data request, point by the point, and providing an independent basis for each question. Sierra Club did not anticipate a need to challenge the confidential designation, but given your honor's preliminary views of this matter that Sierra Club's Wyoming data requests were prima facia evidence of a breach of the protective order, Sierra Club needs clarification and must formally challenge PacifiCorp's interpretation of the breadth of the protective order.

While Sierra Club strongly disputes PacifiCorp's allegations of breach and disputes that the data requests contain any confidential information, Sierra Club hereby challenges PacifiCorp's "designation" of confidential all information contained in Sierra Club's data requests under OAR 860-001-0080(2)(d). PacifiCorp must show that the challenged information is covered by ORCP 36(C)(7), and that the confidential designation was "made in good faith" and "limited to the portions of the document that qualify as a protected trade secret or other confidential research, development, or commercial information."

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