



August 11, 2014

Commissioners Ackerman, Savage and Bloom
Oregon Public Utility Commission
3930 Fairview Industrial Drive SE
Salem, OR 97308

Re: Sierra Club's Request that the Commission Appoint an ALJ Pursuant to Protective Order No. 13-095

Dear Commissioners:

Pursuant to Paragraph 15 of General Protective Order No. 13-095 for Docket No. LC 57, Sierra Club respectfully requests that the Commission appoint an ALJ to help resolve PacifiCorp's allegation that the Sierra Club violated the protective order. On August 8, 2014, PacifiCorp copied this Commission on a letter it sent to the Sierra Club asserting that Sierra Club violated the protective order by referencing in subsequent discovery the Commission's confidential session on the Craig and Hayden coal plants held on August 6, 2014.

As a recap, at the August 6 workshop, PacifiCorp handed out a confidential document that discussed certain aspects of environmental expenditures at the Craig and Hayden coal plants. These same Craig and Hayden coal plant expenditures are directly at issue in the ongoing general rate case in Wyoming. The company is seeking a rate increase in Wyoming but has omitted much of the information contained in the confidential handout from its application and direct testimony before the Wyoming PSC. Sierra Club is troubled by the company's lack of transparency in dockets underway in other states.

Sierra Club acknowledges that its August 7, 2014 data requests to PacifiCorp in the Wyoming rate case made a direct reference to the company's confidential presentation on the Craig and Hayden environmental investments. While the questions stem from the confidential session with the Oregon commissioners, the Club's reference to the existence of a confidential handout on these coal plants was already a matter of public record,¹ and the Wyoming docket is also subject to a protective order.

¹ Note that the public agenda circulated on the morning of August 6 itemized for the afternoon session a "confidential report on Craig and Hayden investments."

In the August 8 letter, the company accused Sierra Club of sending discovery “questions [that] include confidential information regarding the analysis provided during discussions in the confidential workshop.” (Letter from Sarah Wallace to Gloria Smith at p. 2.) However, the company did not identify any specific instance where confidential information was disclosed in the data requests. Importantly, Sierra Club was careful to ensure that the questions themselves only referenced the report and disclosed none of the protected information contained therein. In fact, Sierra Club could have submitted the data requests absent any reference to the handout and the Company could not have complained. For example, questions concerning the existence of a settlement for the Craig SCRs are permitted because the settlement is publicly available.² Similarly, questions regarding coal contracts and participation agreements are allowed because such utility arrangements are common knowledge. Should the Commission assign an ALJ to this matter, Sierra Club looks forward to providing an independent basis for each of the questions posed in our August 7, 2014 data requests in the Wyoming docket.

Sierra Club takes the company’s allegations very seriously and we strive to comply with the duties and obligations that come with participating in utility commission proceedings. For that reason, the Sierra Club seeks clarification on the Oregon Commission’s interpretation of trade secrets and other confidential research, development, or commercial information under ORCP 36(C)(7).

Respectfully submitted,



Gloria D. Smith
Senior Managing Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5532
gloria.smith@sierraclub.org

CC: Sarah K. Wallace, Assistant General Counsel, PacifiCorp
Jason Jones, Oregon Department of Justice
John S. Burbridge on behalf of the Public Service Commission of Wyoming
Jordan White, Legal Counsel, Utah Public Service Commission

² http://www.wildearthguardians.org/site/DocServer/Craig_settlement_final_7.10.14.pdf?docID=14102