BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

LC 77

In the Matter of PACIFICORP d/b/a PACIFIC POWER, 2021 Integrated Resource Plan	SIERRA CLUB'S RESPONSE TO PACIFICORP'S OBJECTION TO NEWSUN ENERGY'S DESIGNATION OF QUALIFIED PERSONS AND NEWSUN ENERGY'S RESPONSE THERETO

Sierra Club respectfully writes in response to PacifiCorp's Objection to NewSun Energy's (NewSun) Designation of Qualified Persons and NewSun's Response thereto. Sierra Club is weighing in because NewSun has raised important public policy issues relevant to all intervenors under Commission jurisdiction. Sierra Club is no stranger to past instances where PacifiCorp has relied on the Commission's rules to over designate information it would rather keep out of the public realm.

The Commission should seriously consider NewSun's arguments and, more importantly, carefully scrutinize each utility's rationale for designating certain information as confidential and/or objecting to a party's access to designated confidential information. As NewSun articulated, robust and effective stakeholder engagement requires access to the pertinent information that will enable stakeholders to scrutinize a utility's claims, its supporting evidence, errors, biases, and other red flags, and provide meaningful recommendations to the Commission. The over-designation of information as "confidential" continues to severely hinder intervenor engagement and ultimately results in worse public outcomes.

I. Utilities, Including PacifiCorp, Routinely Over Designate Information as Confidential

Sierra Club participates in public utility commission proceedings across the country and has consistently found that utility designation of "confidential" information is universal. Nevertheless, stakeholders rarely challenge these designations because doing so requires committing extensive time and resources that would otherwise be spent engaging in the substance of the proceeding. As a result, the utility largely has free rein to designate any information as confidential that it feels *might* constitute a "trade secret or other confidential research, development, or commercial information" under ORCP 36(C)(1).

This free rein results in information being designated as confidential without any clear justification. For instance, in this proceeding, PacifiCorp designated as confidential all financial information pertaining to the proposed Natrium plant. This nuclear plant is a demonstration project, largely funded by the federal government, with no known competition. What harm would befall PacifiCorp if the Natrium plant's pricing was publicly disclosed is far from clear.

Additionally, as this Commission is aware, PacifiCorp designates all of its coal supply agreements, even agreements with its own affiliate mines, not only as confidential but as *highly* confidential and requiring special handling. PacifiCorp has asserted that coal supply agreements must be kept confidential because the coal fuel supply market is tightening and that it is often contractually obligated to keep the contracts confidential. These arguments do not apply when PacifiCorp is contracting with itself—as at the Bridger coal mine—and are in conflict with how coal supply agreements are treated in other states. For example, in Kentucky, all coal supply agreements are publicly posted on the Public Utility Commission's website,[1] providing significant transparency into coal pricing for utility ratepayers. In Sierra Club's experience,

[1] *Fuel Contracts*, Kentucky Pub. Serv. Comm'n, *available at* https://psc ky.gov/PSC_WebNet/FuelContracts.aspx.

PacifiCorp has also designated some information obtained from coal supply agreements as highly confidential, other times confidential, and still other times as public information.[2] This inconsistency makes clear that the confidentiality designations are overused and often arbitrary.

II. The Over Designation of "Confidential" Information Allows Utilities to Maintain Existing, Inequitable Power Structures

Excessively designating relevant information as confidential harms stakeholders and the public in a variety of ways. Fundamentally, the over use of confidentiality designations maintains the inequitable power balance between utility companies and their customers. A utility, which already holds significantly more information than any stakeholder or the Commission, further controls information by severely limiting access to important information to just a handful of people in any given proceeding. This dynamic reinforces the inequitable power balance, which is anathema to maintaining an informed and active citizenry, and more specifically, may hinder Oregon's decarbonization goals.

Inadequate access to utility-held information imposes significant barriers to public and stakeholder participation. As NewSun described, many organizations refrain from participating in public utility commission proceedings because of the high barriers to entry, including the hurdles to accessing needed data and information to meaningfully contribute. In Sierra Club's experience, collaborating and sharing resources with aligned groups has proven difficult because

[2] For example, despite designating the Huntington coal supply agreement as "highly confidential" requiring "special handling," PacifiCorp has publicly disclosed that the Huntington coal supply agreement has an environmental re-opener clause. *See, e.g.,* PAC/600 at Ralston/26-28, Dkt. No. UE-390 (discussing at length the Huntington contract's environmental regulatory clause). While PacifiCorp redacted the actual contract language, Mr. Ralston's public testimony discussed the contract term in general terms. Yet, when discussing other plants, the Company redacted general descriptions of contract terms, even when not quoting from those contracts. *See, e.g., id.* at Ralston/23-24 (redacting discussion on Wyodak contract terms; notably this discussion was labeled as "confidential" rather than "highly confidential" even though the Wyodak contract is designated a "highly confidential" document). PacifiCorp's practice of publicly discussing contract terms for some coal supply agreements but not others, while designating *all* contracts as "highly confidential," leads to confusion for both intervening parties and the Commission on what information is, in fact, confidential.

many community organizations and other underrepresented groups choose not to sign protective agreements in order to manage risk. The result is that fewer parties participate, fewer issues are brought to the Commission's attention, and the resulting IRP falls short of Oregon's aggressive decarbonization goals.

Over designation of confidential information additionally hinders public education, which could bring more stakeholders into future processes. Sierra Club has repeatedly found it impossible to share important information—such as the cost differential between running a coal plant compared to renewable resources—with the broader public because the pricing information is shielded from public view. This results in potentially interested parties not realizing the significance of participating in public utility proceedings, particularly the IRP. This now pervasive practice cannot be what the State of Oregon envisioned when it set up its rules for carrying out the utility compact.

III. The Burden Is on the Utility to Demonstrate that Each Individual Document Designated as Confidential Does, in Fact, Contain Confidential Information

For all of the reasons above, it is imperative that the Commission scrutinize PacifiCorp's confidentiality designations, ensuring that they are narrowly tailored and that PacifiCorp has justified each designation. As a public utility, the presumption should be that utility information will be made publicly available—not that utility information will be largely shielded from public view unless challenged and fully litigated.

In this instance, PacifiCorp acknowledged that it has no objection to NewSun obtaining access to some confidential information but that its *preference* is to shield NewSun from the entirety of all confidentially-designated information because segregation would be too burdensome. The Commission should flatly reject this position and direct PacifiCorp to make available to NewSun all information to which it takes no issue with disclosing. Moreover, the

Commission should closely scrutinize whether NewSun should be denied access to project specific pricing information relevant to the upcoming all-source RFP. As NewSun explained, PacifiCorp may submit benchmark bids; yet, there is no indication that PacifiCorp will screen employees working on those bids from working on the IRP. This is only another example of the utility monopolizing access to information for its own self-interest, which may or may not be aligned with ratepayers' interests.

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Respectfully submitted,

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