

**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 SURREPLY TO
PACIFICORP’S RESPONSE TO
SIERRA CLUB’S OBJECTION TO
DESIGNATION OF CERTAIN
INFORMATION AS CONFIDENTIAL

Sierra Club hereby files its Surreply pertaining to PacifiCorp’s confidential designation of Attachment to Staff Data Request 097 (“OPUC 097”). For the reasons set forth below, Sierra Club respectfully requests that this Commission grant its objection and direct PacifiCorp to make its response to OPUC 097 publicly available.

I. Background

At issue is the confidentiality of projected carbon dioxide (“CO₂”) emissions at Jim Bridger Units 1 and 2, which PacifiCorp seeks to convert to gas in 2024 under its preferred portfolio. PacifiCorp provided these projections in response to OPUC 097, but marked them as confidential and has since asserted that the projected emissions constitute “trade secrets.”

The carbon intensity of PacifiCorp’s generation fleet, including that of Jim Bridger Units 1 and 2, is of significant public interest both to the Sierra Club and the general public. Sierra Club, as an environmental organization with a mission to rapidly and equitably transition from fossil fuels to clean energy resources, has a significant interest in not only gaining access to projected greenhouse gas emissions but also sharing that information with its staff and members. This information is also undoubtedly of great interest to the general public, particularly in Oregon, where public support for a sustainable energy future has prompted the legislature to pass multiple pieces of legislation moving the state off of fossil fuels. Understanding projected

emissions from PacifiCorp's generating resources allows both Sierra Club and the general public to critically assess not only PacifiCorp's IRP filing and the emission projections contained therein but also the veracity of PacifiCorp's public facing media, which often depicts the Company as one aggressively reducing its greenhouse gas emissions and transitioning to a clean energy fleet.¹

Additionally, this type of information is not typically held in confidence. As Sierra Club noted in its Objection, historical CO₂ emissions from coal plants are publicly available on the federal Environmental Protection Agency's ("EPA") Clean Air Markets Program Data website. Projections of other air pollutant emissions, such as particulate matter ("PM"), nitrogen oxides ("NO_x"), and sulfur oxides ("SO_x") are routinely disclosed in air permitting documents, where they are made available for public comment. While these pollutants, unlike CO₂, are subject to emission limitations under the federal Clean Air Act, there is no reason to think that these emissions are somehow distinct, for confidentiality purposes, from CO₂ emissions. Namely, disclosure of any of these pollutant emissions will not cause competitive or financial harm to the Company or its ratepayers, discussed further below.

Despite the significant public interest in CO₂ emissions and the lack of justification for treating projected emissions as confidential, PacifiCorp seeks to shield this information from public view by designating its response to OPUC 097 as confidential. For the reasons described below, PacifiCorp has not met its burden to demonstrate that this information should be withheld from the public.

¹ See, e.g., PacifiCorp's 2021 Integrated Resource Plan, Cover Page (depicting two solar arrays, a wind turbine, and transmission towers).

II. Legal Standard

As stated in PacifiCorp's Response, in order for information to qualify as confidential under the terms of the Commission's general protective order, the information must: "(a) [f]all[] within the scope of ORPC 36(C)(1) (a trade secret or other confidential research, development, or commercial information); and (b) [not be] publicly available." While the legal standard set forth in PacifiCorp's Response is largely accurate, PacifiCorp deemphasizes that in order for information to qualify as a "trade secret," the designating party must demonstrate that disclosure would result in significant harm.² Oregon courts have required that parties seeking to designate information as confidential demonstrate "a clearly defined and serious injury" that would result from disclosure.³ Relying on federal law, the Oregon Court of Appeals in *Citizens' Utility Board of Oregon v. Oregon Public Utility Commission* noted that "[b]road allegations of harm unsubstantiated by specific examples or articulated reasoning" are insufficient to warrant the issuance of a protective order.⁴

III. PacifiCorp Has Not Demonstrated that Projected Emissions at Jim Bridger Units 1 and 2 Provided in Response to OPUC 097 Qualify as a Protectable Trade Secret

PacifiCorp's assertion that projected emissions at Jim Bridger Units 1 and 2 are covered by the Uniform Trade Secrets Act, ORS 646.461(4), fails for two primary reasons.

First, PacifiCorp has not identified any "clearly defined and serious injury" that would result from disclosing projected CO₂ emissions at Jim Bridger Units 1 and 2. PacifiCorp attempts to identify a harm by stating that "unit-specific forecasted emissions data . . . could be used by suppliers and contractors to glean information about the Company's emission control

² *Pfizer, Inc. v. Oregon Dep't of Justice*, 254 Or. App. 144, 160 (2012).

³ *See, e.g., Citizens' Util. Bd. of Oregon v. Oregon Pub. Util. Comm'n*, 128 Or. App. 650, 659 (1994).

⁴ *Id.* at 658.

requirements at Jim Bridger Units 1 and 2, placing the Company at a competitive disadvantage in the marketplace if the Company requests bids on emission control equipment or technology.”⁵ PacifiCorp is presumably referencing CO₂ emission control requirements, because only CO₂ emissions would be disclosed. However, no CO₂ emission control requirements exist at either the state or federal level. Even assuming that CO₂ emission control requirements would arise, it is likely that PacifiCorp would be required to disclose projected emissions in needed air permit applications, just as operators of air pollution sources currently disclose regulated emissions, such as PM, SO_x, and NO_x. Regardless, no such regulation is in effect and thus any potential injury is merely speculative.

Moreover, it is far from clear how public knowledge of projected CO₂ emissions at any of PacifiCorp’s generating units would put the Company at a competitive disadvantage in the event that CO₂ emissions are regulated. PacifiCorp posits that public knowledge of projected emissions would “give insight of the potential costs the Company would be willing to pay to control the emissions at Jim Bridger Units 1 and 2, which could artificially increase the bids submitted in an RFP process.”⁶ However, PacifiCorp would undoubtedly need to disclose projected emissions data to potential contractors and suppliers in order to allow those parties to make informed bids.

In a similar vein, PacifiCorp argues that disclosure would put the Company at a disadvantage when buying or selling power, because third parties would be able to estimate expected dispatch of Jim Bridger Units 1 and 2.⁷ However, PacifiCorp acknowledged, during its meet and confer with Sierra Club, that third parties are likely able to extrapolate projected emissions at Jim Bridger based on plant’s closure dates contained in the 2021 IRP and publicly

⁵ PacifiCorp Response at 6.

⁶ *Id.*

⁷ *Id.*

available, historical CO₂ emission data available through the EPA's Clean Air Markets Program Data website. In other words, any third party seeking to estimate expected dispatch of Jim Bridger based on anticipated CO₂ emissions is likely already able to do so. Notably, this argument is also premised on the prospective of currently nonexistent regulations that would limit CO₂ output from sources like Jim Bridger.

Second, PacifiCorp has not demonstrated that projected CO₂ emissions should remain confidential merely because the projections were generated by PLEXOS. PacifiCorp asserts that there is a distinction between historical emissions data, which is publicly available and “collected by continuous emissions monitoring equipment[.]” and the projected emissions, which were produced by PLEXOS.⁸ Sierra Club does not dispute that the two data sets are different; however, even PacifiCorp does not allege that the *outputs* of each data set are substantially different. It is far from clear why public disclosure of last year's emissions at Jim Bridger causes the Company no harm, but an estimate of next year's emissions would.

PacifiCorp also argues that it has “expended significant resources to develop the modeling techniques and input assumptions underlying forecasted emissions data inputs and outputs . . . [.]”⁹ but Sierra Club is not asking PacifiCorp to disclose its modeling techniques or input assumptions. Instead, Sierra Club is merely requesting that the *output* be disclosed, which would not, in and of itself, disclose any of the proprietary information, such as modeling techniques and assumptions, that PacifiCorp seeks to shield from public view.

PacifiCorp also asserts that it “would be extremely difficult for the forecasted emission inputs and outputs to be ‘properly acquired or duplicated by others’ because the inputs and

⁸ *Id.* at 7.

⁹ *Id.*

outputs rely on proprietary modeling.”¹⁰ Yet, again, Sierra Club is *not requesting* that any inputs be publicly disclosed, and, as noted above, PacifiCorp has already conceded that the only output—projected emissions at Jim Bridger Units 1 and 2—could likely be extrapolated based on publicly available information.

IV. Conclusion

For the reasons set forth above, Sierra Club respectfully requests that the Commission grant its objection to PacifiCorp’s confidential designation of its responses to OPUC 097 and direct the Company to make its response publicly available.

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Respectfully submitted,

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¹⁰ *Id.*