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March 9, 2022

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

**RE: LC 77— PacifiCorp's Sur-Reply to Sierra Club's Objection to PacifiCorp's Designation of Certain Information as Confidential**

PacifiCorp d/b/a Pacific Power encloses for filing its Sur-Reply to Sierra Club's Objection to PacifiCorp's Designation of Certain Information as Confidential in the above-referenced docket.

Informal inquiries may be directed to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,

Shelley McCoy  
Director, Regulation

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**LC 77**

In the Matter of  
PACIFICORP, d/b/a PACIFIC POWER,  
2021 Integrated Resource Plan.

**PACIFICORP’S SUR-REPLY TO  
SIERRA CLUB’S OBJECTION TO  
PACIFICORP’S DESIGNATION OF  
CERTAIN INFORMATION AS  
CONFIDENTIAL**

**I. INTRODUCTION**

In accordance with Paragraph 10 of the General Protective Order issued by the Public Utility Commission of Oregon (Commission) in this docket,<sup>1</sup> PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company), responds to Sierra Club’s Reply (Sierra Club Reply)<sup>2</sup> to the Company’s Response to the Written Objection to PacifiCorp’s Designation of Certain Information as Confidential (Sierra Club Objection). Muddling the nature of the information at issue, Sierra Club confuses four distinct categories of information: forecasted emissions; historical emissions; permitted emissions; and extrapolated data. All its arguments fail. Specifically, the information at issue concerns Company-generated forecasted annual emissions data for Jim Bridger Units 1 and 2, which is the result of extensive modeling in PLEXOS based on assumptions made in the 2021 IRP, which is quite different from historical, permitted or extrapolated data.<sup>3</sup>

When designating data as confidential, the Company balances the need for transparency and access with the need to protect against harmful disclosure. If the

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<sup>1</sup> *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket No. LC 77, Order No. 21-271 (Aug. 30, 2021).

<sup>2</sup> Sierra Club’s filing is entitled “Sierra Club’s Surreply to PacifiCorp’s Response to Sierra Club’s Objection to Designation of Certain Information as Confidential.” However, under Paragraph 10 of Order No. 21-271, the Sierra Club’s filing is a “Reply” and the Company’s filing is the “Sur-Reply.” In this filing, Sierra Club’s filing on March 4, 2022, will be referred to as “Sierra Club Reply.”

<sup>3</sup> The confidential forecasted emissions data was provided in response to Staff data request 097.

information derives economic value from not being known and disclosure would result in significant harm, efforts are made to maintain its secrecy and the Company will designate such information as a confidential trade secret. Here, the Company makes every effort to maintain the secrecy of forecasted emissions data because if it were to become known, the Company would be disadvantaged not only in dealing with suppliers and contractors but also when buying and selling power. Thus, if this information were to be made public, PacifiCorp and ultimately its customers would be substantially harmed.

The Commission should confirm the Company's designation of the data as confidential and deny Sierra Club's Objection.

## II. ARGUMENT

### A. **Forecasted Emission Data is NOT the Same as Historical, Permitted and Extrapolated Emission Data.**

Sierra Club attempts to conflate four separate and distinct categories of data with its quest to make forecasted emissions data public. In its Objection, Sierra Club equated forecasted emissions data from the 2021 IRP with historical emissions data the Company reports to the EPA.<sup>4</sup> Then, in its Reply, Sierra Club compares the forecasted emissions data with the data that the Company submits with air permit applications and data that is extrapolated from publicly available information.<sup>5</sup> Before addressing Sierra Club's various assertions, it is important to define each of the four categories of emissions data:

- **Forecasted (or Projected) Emission Data (Confidential):** This data, provided in response to Staff data request 097, is the PLEXOS modeling output *based on the assumptions made in the 2021 IRP*. This represents what the Company

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<sup>4</sup> Sierra Club Objection at 1.

<sup>5</sup> Sierra Club Reply at 4-5.

projects the emissions to be based on the 2021 IRP assumptions and the PLEXOS model dispatch.

- Historical Emissions Data (Public): This past actual data, which is reported to the EPA and made publicly available on the Clean Air Markets Program Data website, *is collected by continuous emissions monitoring equipment that is certified, maintained, and operated in accordance with federal regulations, specifically Title 40 of the Code of Federal Regulation Part 75.* This represents what the Company has emitted based on certified monitoring equipment.
- Permitted Emissions Data (Public): This is the “*do not exceed*” *emission limits* that exist in the Company’s air permits and air permit applications.<sup>6</sup> These are the limits that are established for purposes of compliance with air quality regulations, thus they are publicly disclosed and are enforced by regulatory agencies. These limits are akin to highway speed limits, which tell a driver how fast it *can* go but provides no information on how fast it has gone or how fast it is projected to go. Thus, this is what the Company is allowed to emit.
- Extrapolated Emission Data (Public): This data is a theoretical *guesstimate* that may be calculated by any external party based on publicly available historical and/or permitted emission data. Extrapolated emission data values will naturally vary depending on the calculation methods and assumptions used by the party extrapolating the data.

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<sup>6</sup> Sierra Club also refers to this data as “regulated emissions.”

Sierra Club either does not understand or is simply confusing these types of emissions data. For example, Sierra Club claims that “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.”<sup>7</sup> This statement is inaccurate for several reasons. First, air permits and applications include permitted emission limits, not forecasted emissions. As explained above, an air permit does not dictate how much an operator is projecting to emit, but rather the maximum amount it can emit. Second, “regulated emissions” is just another name for “permitted emissions.” Sierra Club seems to introduce this term attempting to disguise “regulated emissions” as projected emissions. Third, operators are only required to disclose historical and permitted emissions. Operators must disclose historical emissions so that agencies can verify that historical emissions are in compliance with permitted emissions. Finally, asserting that something is “likely” to be disclosed does not mean it has been or will be. In this instance, the Company would not provide forecasted emission data with any air permit applications. Rather, the Company would submit applications that propose permitted emissions, which are publicly available.

Sierra Club’s Reply is also inconsistent. On one hand it claims that projected carbon dioxide (CO<sub>2</sub>) emissions are likely to be disclosed in future permit applications, but also acknowledges that “no CO<sub>2</sub> emission control requirements exist at either the state or federal level.” It would be illogical to require operators to disclose confidential forecasted emissions data based on speculation that there may be a future requirement from an agency for the operator to propose and establish permitted emissions. Setting aside the fact that forecasted emissions data is not provided with air permit applications, the Company questions how such

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<sup>7</sup> Sierra Club Reply at 4.

data will ‘likely’ be disclosed in air permit applications when there are no current state or federal requirements for CO<sub>2</sub> emission limits. Even if such requirements existed, public disclosures relating to those emission limits would be limited to permitted emissions and historical emissions. PacifiCorp also notes that the Biden administration is working towards decarbonization and may pursue corresponding rules designed to limit power plant emissions. This creates a reasonable expectation that PacifiCorp may be required to control its actual CO<sub>2</sub> emissions in the near future.<sup>8</sup> This would likely require PacifiCorp to establish *permitted emissions* and disclose *historical emissions*, but it would not require PacifiCorp to make confidential forecasted emission information public. The possibility of regulations also further reinforces what the Company has already clearly stated: that it is important that the Company maintain its competitive advantage relating to possible future expenditures relating to CO<sub>2</sub> emission controls.

Furthermore, the emissions that the Company publicly “disclosed”<sup>9</sup> for CO<sub>2</sub>, particulate matter, sulfur oxides, and nitrogen oxides are all *historical or permitted*. PacifiCorp does not disclose forecasted emissions data for any of these air pollutants. Disclosing projected emissions data for one pollutant would set precedent for disclosing projected emissions for all of them. If Sierra Club could point to an example where confidential forecasted emissions data was required to be made public through mandatory agency reporting, it would have already done so. Since there are no such examples, Sierra Club continues to regurgitate its stale and confused argument by pointing to the required disclosures of permitted emissions and historical emissions data.

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<sup>8</sup> See for example, <https://bellona.org/news/climate-change/2021-02-biden-administration-ditches-obamas-clean-power-plan-to-pursue-more-ambitious-regulations>.

<sup>9</sup> Sierra Club Reply at 2.

Finally, it is completely inaccurate to equate forecasted emission data and extrapolated projections calculated based on historical emissions data.<sup>10</sup> As noted above, the forecasted emissions data that was provided in response to Staff data request 097 was the PLEXOS modeling output based on the assumptions made in the 2021 IRP. It would be extremely difficult for the forecasted emissions data inputs and outputs to be properly acquired or duplicated by others because the inputs and outputs rely on proprietary modeling.<sup>11</sup> PacifiCorp's modeling is specific to its system and represents comprehensive interactions including future resources such as proxy resources, that outside parties may be able to roughly estimate but cannot replicate at a unit-level of detail.<sup>12</sup> On the other hand, extrapolated data is a crude guesstimate that can be completed by any external party with varying results depending on the calculation methods and assumptions used by the party extrapolating the data. The Company offered the possibility of extrapolating the information as a logical, middle-ground resolution and in no way stated or implied that the two data sets were equal or interchangeable.

**B. Forecasted Emissions Data is Commercially Sensitive “Trade Secrets” that if Released Would Harm PacifiCorp and its Customers.**

In its Response, PacifiCorp explained that the forecasted emissions data meets the definition of trade secret because it is non-public information that is proprietary and commercially sensitive that would cause substantial harm if made public. Specifically, the detailed unit-specific forecasted emissions data:

- (1) could be used by suppliers and contractors to glean information about the Company's emission control requirements at Jim Bridger 1 and 2, placing the Company at a competitive disadvantage in the marketplace if the Company requests bids on emission control equipment or technology; and

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<sup>10</sup> Sierra Club Reply at 4.

<sup>11</sup> PacifiCorp Response at 7.

<sup>12</sup> *Id.*

- (2) could be used by power market participants to glean or estimate the expected dispatch of the units, which could in turn put PacifiCorp at a disadvantage when buying or selling power.<sup>13</sup>

With respect to the first point, Sierra Club claims that the Company would provide forecasted emissions data to contractors and suppliers to make informed bids.<sup>14</sup> If the Company discloses projected emissions and operations data to potential contractors for request for proposal (RFP) bids, it provides the information as *confidential* at the time of the RFP and information is required to be kept *confidential* under various forms of nondisclosure agreement. Furthermore, the Company prefers to avoid sharing forecasted emissions data with contractors and suppliers where possible, even with non-disclosure agreements. The Company prefers to issue RFPs with bid specifications that align with permitted emission limits as opposed to providing forecasted emissions. The Company does not make the forecasted emissions data publicly available at any time.

As to the second point, Sierra Club simply rebuts this harm by stating that the Company stated that the information could be extrapolated from historical information so it must be public.<sup>15</sup> This is nonsensical. As explained above, the forecasted emissions data provided in response Staff data request 097 is informed through tested inputs and the result of extensive modeling. It is not a result of a crude guesstimate based on historical emission disclosures that can vary depending on the calculation methods and assumptions used by the party extrapolating the data. Historical emissions disclosures do not cause harm because they tell how the Company is controlling emissions. In comparison, projected emission disclosures cause harm because they give insight to what we might be willing to pay going

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<sup>13</sup> PacifiCorp Response at 6.

<sup>14</sup> Sierra Club Reply at 4.

<sup>15</sup> *Id.* at 4-5



forward to control the emissions from that generation and how much power we are planning to generate. The economic dispatch of the Jim Bridger plant is a key element for how the Company dispatches its resources in order to economically serve our system obligations. Public disclosure of the forecasted emissions data could provide power market participants insight into the Company's dispatch of the units, putting PacifiCorp at a disadvantage when buying or selling power, causing substantial harm to PacifiCorp and, ultimately its customers.

### III. CONCLUSION

Based on the foregoing and the Company's Response filed on March 1, 2022, because the information challenged by Sierra Club qualifies as a protected "trade secret or other confidential research, development, or commercial information," PacifiCorp respectfully requests that the Commission confirm the Company's designation of the information as confidential under the protective order and deny Sierra Club's Objection.

Respectfully submitted this 9th day of March, 2022.

By:



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Carla Scarsella  
Deputy General Counsel