



June 5, 2012

**Electronically Filed in Docket UE 246**

Administrative Law Judge Shani Pines  
Oregon Public Utilities Commission  
PO Box 2148  
Salem OR 97308-2148

**RE: UE-246 – Informal Resolution of Discovery Dispute re PacifiCorp’s  
Response to Sierra Club Data Request SC 1-4**

Dear ALJ Shani Pines:

Sierra Club has requested your assistance to help resolve a discovery dispute between Sierra Club and PacifiCorp in docket UE 246. Sierra Club appreciates your quick attention to this matter and we hope that with your help the parties can reach a quick resolution during our telephone conference on June 6, 2012 at 10:30 a.m. In accordance with OAR 860-001-0500(6), Sierra Club hereby identifies the specific discovery sought and describes the efforts taken by Sierra Club and PacifiCorp to informally resolve this dispute.

Sierra Club issued its data request SC 1-4 on April 13, 2012. PacifiCorp initially responded on April 27, 2012 and provided its 1<sup>st</sup> Supplemental Response on May 30, 2012. The request and responses are reproduced below:

**Discovery Sought**

**Sierra Club Data Request 1-4:**

Reference the Direct Testimony of Chad A. Teply, Exhibit PAC/500, page 5 at 15-19 and page 6 at 18-22 regarding the Company’s Comprehensive Air Initiative (CAI).

- a. Please provide the title, date, author, and recipient(s) of CAI documents produced from 1999 through 2012, inclusive.
- b. Please provide the listed CAI documents.

**PacifiCorp Response to SC 1-4:**

“Comprehensive Air Initiative” as used in PAC/500 does not refer to a specific document or plan, but rather the Company’s overall air quality and emissions control policy and associated compliance activities, as developed over time with input from stakeholders and regulators.

**PacifiCorp 1<sup>st</sup> Supplemental Response to SC 1-4:**

Please refer to the Company’s responses to Sierra Club Data Requests 1.1-1, 1.3-4, 1.5, 1.10, 1.12, 1.9, 1.37-1, 1.37-2.

**Nature of the Dispute**

This discovery dispute involves only one data request issued by Sierra Club in this proceeding. In the interests of efficiency and expediency, Sierra Club has worked with PacifiCorp to resolve or limit the remaining discovery issues. However, the parties have been unable to resolve this dispute related to the Company’s response to Sierra Club request SC 1-4.

Sierra Club’s data request SC 1-4 asked the Company to identify and provide all CAI documents produced from 1999 through 2012. This information is critical to Sierra Club’s analysis of the prudence of PacifiCorp’s decision making related to its coal fleet and the numerous capital expense projects that are at issue in this proceeding. PacifiCorp relied heavily in direct testimony on the CAI to support its contention in this proceeding that the capital expenses on emissions control equipment installed on several of its coal fueled generation units were prudent expenses. The Company’s witness, Mr. Chad Teply, referenced the CAI repeatedly as a part of PacifiCorp’s overall decision making process related to its emission control plan. (PAC/500, Teply pp. 5-11).

On April 13, 2012, Sierra Club issued data request SC 1-4, which was similar to an OPUC Staff data request 137 issued March 15, 2012, requesting that the company identify and provide the documents that made up the Comprehensive Air Initiative (the “CAI”). The Company’s April 27, 2012 response to SC 1.4 did not provide any documents, but instead merely responded that the CAI “does not refer to a specific document or plan, but rather the Company’s overall air quality and emissions control policy and associated activities.”

On May 22, 2012, Sierra Club therefore reiterated our request that PacifiCorp identify and provide documents related to the Company’s “overall air quality and emissions control policy and associated compliance activities.” In response, on May 30, 2012, PacifiCorp provided its 1<sup>st</sup> Supplemental Response to SC 1-4, which simply referred to the Company’s responses to SC 1.1-1, 1.3-4, 1.5, 1.10, 1.12, 1.9, 1.37-1 and 1.37-2. PacifiCorp’s failure to fully respond to SC 1.4 regarding the CAI was improper and deprives not only Sierra Club but other parties and the Commission of the opportunity to fully evaluate the Company’s decision making process.

On June 1, 2012, Sierra Club once again requested that PacifiCorp fully respond to SC 1.4 by supplementing its response with additional responsive documents related to

the CAI; or, in the alternative, provide a data response that unequivocally states that PacifiCorp has produced to Sierra Club in this proceeding all planning and policy documents related to the CAI and that no additional documents exist. PacifiCorp deemed this request unreasonable, and Sierra Club therefore sought to resolve this issue pursuant to the informal discovery dispute provisions provided by OAR 860-001-0500(6). To the extent PacifiCorp claims any responsive CAI documents are protected by a legally applicable privilege, Sierra Club requests that PacifiCorp provide a privilege log identifying those documents.

### **Efforts to Resolve this Discovery Dispute**

After reviewing PacifiCorp's response to Sierra Club's first set of data requests, Sierra Club sent a letter to PacifiCorp on May 22, 2012 identifying several outstanding discovery issues and responding to various PacifiCorp objections. (Attachment A.) On May 23, 2012, PacifiCorp attorney Sarah Wallace and Sierra Club attorney Travis Ritchie discussed these issues on the telephone, including Sierra Club's data request SC 1-4 regarding the CAI documents. Sierra Club followed up this phone conversation with an email summarizing the discussion and PacifiCorp's commitment to provide supplemental responses to Sierra Club. (Attachment B.) On May 30, 2012, PacifiCorp provided its 1<sup>st</sup> supplemental response to SC 1-4 as well as supplemental responses to various other Sierra Club data requests.

After reviewing PacifiCorp's supplemental responses, Sierra Club identified several responses that remain deficient; however, in the interests of expediency and efficiency, Sierra Club narrowed its outstanding discovery concerns to only PacifiCorp's failure to substantively respond to SC 1-4. On June 1, 2012, Sierra Club emailed PacifiCorp restating, once again, its request that the Company clearly identify and provide all CAI documents, or, in the alternative, provide a response that unequivocally states that PacifiCorp has produced to Sierra Club in this proceeding all planning and policy documents related to the CAI and that no additional documents exist. (Attachment C.) PacifiCorp responded the same day, June 1, 2012, stating that it had produced all relevant documents that it could find that are responsive to Sierra Club's request, other than those protected by attorney-client or work product privileges. (Attachment D.) However, PacifiCorp refused to provide a response to Sierra Club that the documents produced in this proceeding constituted the entirety of documents related to the CAI, and PacifiCorp raised for this first time in its June 1 email the prospect that certain responsive documents may fall under the protection of attorney-client or work product privileges.

Time is of the essence because Sierra Club's direct testimony in is due in less than two weeks on June 18, 2012. As it stands now, any further responsive production by PacifiCorp would likely require a supplemental filing of testimony by Sierra Club. Nevertheless, the full extent of the CAI remains essential to Sierra Club's analysis of PacifiCorp's decision making process under the CAI. Although PacifiCorp's attorney has been responsive and communicative during this dispute, PacifiCorp's data responses thus far related to the CAI have been vague and evasive. Based on PacifiCorp's responses to Sierra Club's repeated requests for information on this issue, it is evident that further informal discussion with PacifiCorp would be futile.

Sierra Club appreciates your attention to this matter to help facilitate a resolution to this discovery dispute. I am hopeful that the parties will be able to resolve this issue during tomorrow's scheduled telephone conference.

Sincerely,

/s/ Gloria D. Smith .

Gloria Smith  
Sierra Club Environmental Law Program  
85 Second Street, Second floor  
San Francisco, CA 94105  
(415) 977-5532  
gloria.smith@sierraclub.org

Travis Ritchie  
Sierra Club Environmental Law Program  
85 Second Street, Second floor  
San Francisco, CA 94105  
(415) 977-5727  
travis.ritchie@sierraclub.org

*Attorneys for Sierra Club*

cc:  
Sarah K. Wallace  
Legal Counsel, Pacific Power  
825 NE Multnomah Street, Ste 1800  
Portland, OR 97232  
sarah.wallace@pacificorp.com

Electronic Service List in Docket UE 246

# Attachment A



May 22, 2012

**By E-mail and U.S. Mail**

Sarah K. Wallace  
Legal Counsel, Pacific Power  
825 NE Multnomah Street, Ste 1800  
Portland, OR 97232  
[sarah.wallace@pacificorp.com](mailto:sarah.wallace@pacificorp.com)

PacifiCorp Oregon Dockets  
825 NE Multnomah Street, Ste. 2000  
Portland, OR 97232  
[oregondockets@pacificorp.com](mailto:oregondockets@pacificorp.com)

Katherine A. McDowell  
McDowell & Rackner PC  
419 SW 11 th Avenue, Suite 400  
Portland, OR 97205  
[katherine@mcd-law.com](mailto:katherine@mcd-law.com)

Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, OR 97232  
[datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

**RE: UE-246 - Meet and Confer re PacifiCorp's Response to Sierra Club's First Set of Data Requests**

Dear Ms. Wallace:

Sierra Club has reviewed PacifiCorp's responses to Sierra Club's First Set of Data Requests. After reviewing those responses, Sierra Club identified several omissions or improper objections that require additional production by PacifiCorp. In accordance with OAR 860-001-0500(5), Sierra Club would prefer to resolve these discovery issues with PacifiCorp informally. Sierra Club therefore requests that PacifiCorp provide substantive responses to the issues addressed in this letter and supplement its data responses by **Tuesday, May 29, 2012.**

While Sierra Club hopes that all of these issues can be resolved by PacifiCorp filing a supplement response, given the fast approaching deadline to file intervenor testimony in this proceeding, Sierra Club will pursue a motion to compel pursuant to OAR 860-001-0500(7) if these issues are not timely resolved.

Please feel free to contact me at (415)-977-5727 or at [travis.ritchie@sierrclub.org](mailto:travis.ritchie@sierrclub.org) to discuss this matter.

Sincerely,

Travis Ritchie  
Associate Attorney  
Sierra Club  
85 Second Street, Second floor  
San Francisco, CA 94105  
(415) 977-5727  
[travis.ritchie@sierraclub.org](mailto:travis.ritchie@sierraclub.org)

## **I. MISSING DOCUMENTS:**

Sierra Club executed the protective agreement in this proceeding and is therefore entitled to all confidential versions of testimony and exhibits filed by PacifiCorp in its application. Sierra Club also requested in SC 1-1 copies of PacifiCorp's responses to all other data requests in this proceeding. Sierra Club has noted the following confidential documents and responses to other parties' data requests that are missing from the production we have received thus far:

### Confidential Testimony (or Exhibits):

Chad A. Teply  
Darrell T. Gerrard (Exhibits)  
Bruce W. Griswold (Exhibits)  
R. Bryce Dalley (Exhibits)

### Missing OPUC Staff DR Responses:

1-159, 161-168, 175-184, 211, 213-240, 251-253

### Missing Other Parties DR Responses:

ICNU 4 and 5.  
CUB – All requests

## **II. PACIFICORP IMPROPERLY CHANGED THE DEFINITION OF “ENVIRONMENTAL RETROFIT UNITS” AND “ENVIRONMENTAL PROJECTS.”**

### **A. Environmental Retrofit Units**

Sierra Club clearly defined the term “Environmental Retrofit Units” for purposes of Sierra Club's First Set of Data Requests to include the following thermal generating stations:

- Naughton Unit 1
- Naughton Unit 2
- Hunter Unit 1
- Hunter Unit 2
- Hunter Unit 3
- Dave Johnston Unit 4
- Cholla Unit 4
- Wyodak Unit 1
- Huntington Unit 1
- Jim Bridger Unit 3
- Jim Bridger Unit 4



PacifiCorp's responses to SC 1-3, SC 1-5, SC 1-18, SC 1-31, SC 1-32, SC 1-33, 1-34, SC 1-41 and SC 1-42 ignored that clear definition and excluded the following units from its responses:

- Hunter Unit 3
- Cholla Unit 4
- Huntington Unit 1
- Jim Bridger Unit 4

This re-interpretation of the term "Environmental Retrofit Units" was inappropriate. Costs related to all of the units that Sierra Club defined as "Environmental Retrofit Units" are at issue in this rate proceeding. Sierra Club's data requests about those units are therefore relevant to this proceeding and PacifiCorp has no grounds for denying discovery as to those generating units. Whether or not PacifiCorp characterizes those units as involving environmental retrofits is irrelevant; Sierra Club clearly defined its questions to include all of the excluded units. Sierra Club therefore requests that PacifiCorp supplement its responses to include information on Hunter Unit 3, Cholla Unit 4, Huntington Unit 1 and Jim Bridger Unit 4.

#### **B. Environmental Projects:**

Sierra Club clearly defined the term "Environmental Projects" for purposes of Sierra Club's First Set of Data Requests to include the following steam plant additions listed:

- Naughton U2 Flue Gas Desulfurization Sys
- Naughton U1 Flue Gas Desulfurization Sys
- Naughton U1 NOx LNB
- Nauhgtion U2 NOX LNB – Clean
- Naughton U0 FGD Reagent Loadout Facility
- Hunter U1 SO2 Upgrades
- 302 – Hunter U2 SO2 Project
- Hunter 303 Hunter 3 Wet Stack Upgrades
- Hunter 302 Clean Air – PM
- Hunter 303 FGD Tower Isolation Dampers
- DJ U0 – Replace DJ Retro Cooling Tower
- DJ U4 SO2 & PM Emission Cntrl Upgrades
- Cholla 4: Cooling Tower Structure Imprv
- Cholla 4: Cooling Tower Struct Cells-E-L
- Wyodak U1 SO2 and PM Emiss Control Upgrade
- Huntington 303 FGD Tower Isolation Dampers
- Huntington U1 SO2 & PM Em Cntrl Upgrades
- JB U4 SO2 & PM Em Cntrl Upgrades
- JB U3 SO2 & PM Em Cntrl Upgrades

- JB U4 Wet Sack Conversion

PacifiCorp's responses to SC 1-10, SC 1-11, SC 1-12, SC 1-18, SC 1-20 through 1-29, SC 1-32 and SC 1-41 ignored that clear definition and re-interpreted Sierra Club's request to exclude the following projects from its responses:

- Naughton U0 FGD Reagent Loadout Facility
- Hunter 303 Hunter 3 Wet Stack Upgrades
- Hunter 303 FGD Tower Isolation Dampers
- DJ U0 – Replace DJ Retro Cooling Tower
- Cholla 4: Cooling Tower Structure Imprv
- Cholla 4: Cooling Tower Struct Cells-E-L
- Huntington 303 FGD Tower Isolation Dampers
- JB U4 SO2 & PM Em Cntrl Upgrades
- JB U4 Wet Sack Conversion

This re-interpretation of the term "Environmental Projects" was inappropriate. Costs related to all of the projects that Sierra Club defined as "Environmental Projects" are at issue in this rate proceeding. Sierra Club's data requests related to those projects are therefore relevant to this proceeding and PacifiCorp has no grounds for denying discovery as to those projects. Whether or not PacifiCorp characterizes those projects as environmental is irrelevant; Sierra Club clearly defined its questions to include all of the excluded units. Sierra Club therefore requests that PacifiCorp supplement its responses to include information on the above-listed projects.

### **III. SIERRA CLUB'S RESPONSE TO PACIFICORP OBJECTIONS**

#### **SC 1-4:**

*Reference the Direct Testimony of Chad A. Teply, Exhibit PAC/500, page 5 at 15-19 and page 6 at 18-22 regarding the Company's Comprehensive Air Initiative (CAI).*

- Please provide the title, date, author, and recipient(s) of CAI documents produced from 1999 through 2012, inclusive.*
- Please provide the listed CAI documents.*

#### **PacifiCorp Response:**

PacifiCorp did not provide any documents responsive to Sierra Club's request for documents related to the Company's Comprehensive Air Initiative (CAI). PacifiCorp responded that the CAI "does not refer to a specific document or plan, but rather the Company's overall air quality and emissions control policy and associated compliance activities..."

Importance of and Need for Production (OAS 860-001-0500):

Sierra Club's question SC 1-4 did not ask for a single document, but rather requested PacifiCorp to identify and provide "CAI documents." Using the description of the CAI provided by PacifiCorp's own response to SC 1-4, the Company should have responded to SC 1-4 by identifying and providing documents related to "the Company's overall air quality and emissions control policy and associated compliance activities." These documents are part of the CAI and are the "CAI documents" that Sierra Club requested in SC 1-4.

Various documents provided by PacifiCorp in other data requests in this proceeding and others make reference to the CAI (*see* Strategic Asset Plans provided in response to SC 1-35) or, in some cases, include "CAI" in the title of the document. (*See, e.g.,* PacifiCorp Response Attachment to DPU 24.13 provided in Utah Docket 10-035-124, titled "CAI Capital Projects Study.")

The existence of an internal PacifiCorp policy or initiative necessarily implies that there is some form of written documentation developing and implementing this policy. Sierra Club does not know the full extent or nature of what these CAI related documents may include and therefore requested that PacifiCorp respond to data request SC 1-4 by first identifying the documents that are related to the CAI and then providing those documents. Based on prior dockets, Sierra Club understands that CAI documents include:

- Strategic asset plan for individual units (provided in response to SC 1.35)
- Fleetwide analyses air quality and emissions controls
- Business plans
- Board meeting notes or presentations discussing the CAI (also previously referred to as the "Air Quality Reference Case"; *see* Response to SC 1.9, Deseret Arbitration Exhibit 41, Witness Lawson, Bates ID *PACARB1 000014665*.)
- Engineering analyses or reports analyzing various control options available for PacifiCorp's fleet (*See, e.g.,* Response to SC 1.9, Deseret Arbitration Exhibit 34, *PACARB1 000014238*.)

SC 1-14:

*Please provide copies of email and hard-copy correspondence, presentations, and other data provided to or received from the US EPA, US DOJ, the Utah DEQ, the Wyoming DEQ, or any combination of those entities regarding the Environmental Projects or environmental planning for air, water, and solid waste environmental compliance. Provide documentation from January 1, 2003 through 2012, inclusive. If PacifiCorp believes any or all of these documents are in the public record, please indicate where the Company believes the documents can be found.*

PacifiCorp Response:

PacifiCorp objected to this request on the grounds that it was overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. PacifiCorp also referred to its responses to SC 1.12(d), which included correspondence between PacifiCorp and either Utah or Wyoming DEQ related to air or water quality permits for each Environmental Project.

Importance of and Need for Production (OAS 860-001-0500):

PacifiCorp's incorporation of its response to SC 1.12(d) misses several areas of correspondence that were requested by SC 1-14. The response does not include correspondence with the federal agencies (US EPA and DOJ). Sierra Club disagrees with PacifiCorp's contention that communication between the Company and US EPA and DOJ is not reasonably calculated to lead to the discovery of admissible evidence. PacifiCorp has stated that a primary motivation for many of the Environmental Projects at issue in this proceeding were the result of compliance requirements that are overseen or enforced by these federal agencies. Discussions between these agencies and PacifiCorp is therefore very likely to provide information to Sierra Club and the Oregon Commission related to the prudence of the decision making process that PacifiCorp underwent when it decided to pursue these capital projects.

Sierra Club disputes that the request in SC 1-14 is overly broad; however, Sierra Club is willing to limit its request for purposes of expediency by the following parameters:

- Provide all communications with EPA and DOJ between 2008-2010 (inclusive), that include analyses or presentations, developed either by the agency or PacifiCorp or jointly, regarding the Environmental Projects or environmental planning for air, water, and solid waste environmental compliance. (*See, e.g.,* Response to SC 1.9, Deseret Arbitration Exhibit 33, PACARB1 000014464 (2002 example of relevant presentation).); and,
- Provide all hard copy correspondence with EPA and DOJ between 2008-2010 (inclusive) regarding the Environmental Projects or environmental planning for air, water, and solid waste environmental compliance.

SC 1-32:

Definition 2: “Vintage 10-Year Plan Generating Unit Data Set” for a specified date means the values for the elements of the 10-Year Plan Generating Unit Data Set and for each of Environmental Retrofit Units as relied on by the Company in its 10-Year Plan most recently adopted on or before that specified date.

*Vintage 10-Year Plan Generating Unit Data. For each individual generating unit identified in the defined “Environmental Projects” list, starting at the earliest date in discovery request SC 1-11.a (“the date on which all required construction permits were obtained”) above, but no later than 2006 and extending to*

*December 2011, for all instances in which the following data were historically produced or procured by the Company, but not less frequently than annually, please provide, in digital machine readable format (preferably in the Excel platform), annual expectations or forecasts of the Vintage 10-Year Plan Generating Unit Data Set.*

PacifiCorp Response:

PacifiCorp objected to this request on the grounds that it was overly broad and unduly burdensome and not reasonably calculated to lead to discoverable information. PacifiCorp further objected that the request required the development of a special study of information.

Importance of and Need for Production (OAS 860-001-0500):

Sierra Club's request in SC 1-32 is not overly broad or unduly burdensome. Sierra Club requested the data set or sets that include the data for each of Environmental Retrofit Units that the Company relied on in its 10-Year Business Plan. Sierra Club limited the date range of its request to the date on which all Environmental Project construction permits were obtained (but not later than 2006) through December 2011. The data supporting the 10-Year Business Plan is not overly broad or burdensome to produce.

SC 1-32 does not require the development of a special study or information. Sierra Club's request was specific to a data set that is within the Company's possession and forms a primary component of the Company's 10-Year Business Plan.

These data are relevant because they will inform Sierra Club and the Commission as to the extent of the information that the Company had and considered as part of its business plan and capital expense decision making process for projects that are at issue in this proceeding.

SC 1-33:

*For each date for which vintage data are provided in discovery request SC 1-32, above, please provide, in digital machine readable format (preferably in the Excel platform), the Official Forward Price Curve dataset used by the Company for:*

- a. Annual average delivered coal prices in \$/MMBtu;*
- b. Annual CO2 prices for all scenarios considered by the Company;*
- c. Monthly natural gas prices at the Opal hub;*
- d. Monthly forward market electricity price curves at the Mona and PACEW hubs at hour blocks HLH, LLH, Flat, MF-SSP, MF\_SSP, MSu\_SSP, MSa\_SSP, MF\_HLH, and MSu\_HLH for each combination of CO2 and natural gas price in (b) and (c), above.*

PacifiCorp Response:

PacifiCorp objected to this request on the grounds that it was overly broad and unduly burdensome and not reasonably calculated to lead to discoverable information.

PacifiCorp further objected that the request required the development of a special study of information.

Importance of and Need for Production (OAS 860-001-0500):

Sierra Club's request in SC 1-33 is not overly broad or unduly burdensome. Sierra Club requested data from the date range at issue in SC 1-32 (i.e. from the date on which all Environmental Project construction permits were obtained through December 2011) and further specified which data sets it was requesting (i.e. the datasets used by the Company for coal prices, CO2 prices, natural gas prices, and forward market electricity price curves).

SC 1-32 does not require the development of a special study or information. On information and belief, Sierra Club understands that PacifiCorp develops an Official Forward Price Curve ("OFPC") at the end of every calendar quarter. This is the information that Sierra Club requested in its data request SC 1-33.

These data are relevant because the data contained in the OFPC will inform Sierra Club and the Commission about the information available to the Company at the time that it made the decision to pursue the Environmental Projects at issue in this proceeding.

SC 1-34:

*Vintage 10-Year Plan Replacement Unit Data. For each date for which Vintage 10-Year Plan Generating Unit Data Set values are provided in discovery request SC 1-32, above, please provide, in digital machine readable format (preferably in the Excel platform), vintage expectations for the cost and performance of a "G" Class 1x1 water-cooled CCCT in Utah at 4,500' elevation, including:*

- a. Heat rate;*
- b. Variable O&M costs (in \$/MWh);*
- c. Fixed O&M costs (in \$/kw-yr);*
- d. Other fixed costs ("run rate capital" in \$/kw-yr);*
- e. The forced outage rate;*
- f. Maintenance outage rate;*
- g. Upfront capital expense and dollar year;*
- h. Expected book life;*
- i. Gas transport costs in (\$/kw-yr);*

PacifiCorp Response:

PacifiCorp objected to this request on the grounds that it was overly broad and unduly burdensome and not reasonably calculated to lead to discoverable information. PacifiCorp further objected that the request required the development of a special study of information.

Importance of and Need for Production (OAS 860-001-0500):

Sierra Club's request in SC 1-34 is not overly broad or unduly burdensome. The information requested by Sierra Club in SC 1-34 is basic cost and performance data for a natural gas plant. This data on a natural gas plant alternative is routinely kept and

reviewed by utilities when making decisions about the cost of capital investments compared to alternatives. To the extent PacifiCorp considered cost and performance data of a natural gas plant during the period at issue in Sierra Club's request (i.e. from the date on which all Environmental Project construction permits were obtained through December 2011), the request is not overly broad or unduly burdensome because that information should be readily identifiable and available.

If PacifiCorp does not maintain this type of information, PacifiCorp must state in its response to SC 1-34 that it did not have information on the cost and performance of such a natural gas plant alternative during the period at issue in Sierra Club's request (i.e. from the date on which all Environmental Project construction permits were obtained through December 2011).

PacifiCorp's response is directly relevant to this proceeding because it will inform Sierra Club and the Commission as to the information available to the Company related to the cost and performance alternatives at the time that the Company made the decision to pursue the Environmental Projects at issue in this proceeding.

# Attachment B





Travis Ritchie &lt;travis.ritchie@sierraclub.org&gt;

## UE-246 Sierra Club Data Requests

**Travis Ritchie** <travis.ritchie@sierraclub.org>

Wed, May 23, 2012 at 2:03 PM

To: sarah.wallace@pacificorp.com

Bcc: Jeremy Fisher <jfisher@synapse-energy.com>, Gloria Smith <gloria.smith@sierraclub.org>

Hi Sarah,

Thank you for the call today responding to our meet and confer letter about certain discovery issues related to Sierra Club's first set of data responses. It was a productive conversation and I am hopeful that we will be able to resolve all of these issues informally. As we discussed, I am writing to follow up with you to update what we have identified are the missing responses in our files. I am also writing to confirm with you the next steps for the additional issues we discussed. This is my understanding from the notes I took during our conversation, so please correct me if anything is not quite accurate.

### Other Party Responses

My apologies for the mix up on our side. After reviewing our files, we did find that PacifiCorp has provided many of the response that I had indicated were missing. However, we are still missing a few files. In the company's response to SC1.1-1, we received shortcuts (and not actual PDFs) to OPUC 217-239. We have confidential attachments OPUC 217, OPUC 220(1-6), and OPUC 231; and non-confidential attachment OPUC 219. The Company also provided shortcuts only for responses to ICNU Set 4, as well as what appear to be supplemental responses to ICNU Set 2 and to OPUC 137-154. Additionally, attachments SDR 123 and SDR 124 can't be opened because they require a password. Thanks for your help getting these cleared up.

### Definition of "Environmental Retrofit Units" and "Environmental Projects"

You indicated that PacifiCorp would supplement its responses to our data requests to include responses for the additional units and projects we had included in our definition. I understand that you believe some of our requests may not be applicable to the additional units, and I requested that the Company indicate where those questions do not apply. We will look forward to reviewing those supplemental responses.

### CAI Documents

As I understood it, your concern here is that the term "CAI" does not refer to a clearly defined document or set of documents, but rather a general policy within the Company related to air quality and emissions control. I understand this concern. I attempted to explain that our request for CAI documents really includes the broader request to look at various strategic plans and analyses, as identified in the bullet points in my previous letter, that implement or relate to the CAI. My understanding from our conversation is that PacifiCorp will take a second look at this request with this understanding and either (1) indicate where those documents have already been produced to Sierra Club, and/or (2) supplement its responses to provide additional responsive documents related to the CAI. We will look forward to that follow up information.

### Vintage 10-Year Plan Questions

Regarding SC 1-32, SC 1-33 and SC 1-34, you stated your concern that the requested information does not exist as a formal attachment or component of past business plans. Rather, you indicated that the business plans draw from various sources of information and data, such as the IRP process. Sierra Club understands that the information we requested may not exist as an attachment or supporting document used to create the business plan. Our intent in this request is to understand the data and information available to the Company at the time that it made the decisions related to the Environmental Projects. In short, our data requests are geared to allow us to stand in the shoes of the Company at the time the decisions were made. In our conversation today, you indicated that the Company would work (1) to provide the historical data that was available at the time the relevant decisions were made, and (2) explain at least broadly how that information is incorporated into the Company's decision making process, either in the business plans or otherwise.

Timing

In my letter yesterday, I requested that the Company respond substantively by May 29. You stated that some of the responses will be provided before that date, but you also expressed some concern about this timing given the upcoming holiday on Monday. We are certainly willing to allow some extra time to respond substantively to some of these issues; however, as you know time is of the essence because our testimony is due June 18, which is less than three weeks after the May 29 date. We therefore hope that PacifiCorp will endeavor to provide complete responses to these issues as soon as possible.

Thank you again for your attention to these issues. We do appreciate the substantial data responses that PacifiCorp has provided thus far, and I'm sure we will be able to work out these remaining issues.

—

Travis Ritchie  
Associate Attorney  
Sierra Club Environmental Law Program  
85 Second Street, 2nd Floor  
San Francisco, CA 94105  
[415-977-5727](tel:415-977-5727)  
[travis.ritchie@sierraclub.org](mailto:travis.ritchie@sierraclub.org)

# Attachment C



Travis Ritchie &lt;travis.ritchie@sierraclub.org&gt;

## UE 246 - Sierra Club Data Request 1.4

**Travis Ritchie** <travis.ritchie@sierraclub.org>

Fri, Jun 1, 2012 at 1:25 PM

To: "Wallace, Sarah" <sarah.wallace@pacificorp.com>, "Dalley, Bryce" <Bryce.Dalley@pacificorp.com>

Cc: Gloria Smith <gloria.smith@sierraclub.org>

Bcc: Jeremy Fisher <jfisher@synapse-energy.com>, William Steinhurst <wsteinhurst@synapse-energy.com>, Tyler Comings <tcomings@synapse-energy.com>

Sarah,

Sierra Club appreciates your efforts to address the concerns I raised in my letter on May 22, 2012 regarding our first set of data requests. However, PacifiCorp's failure to fully respond to SC 1.4 regarding the Comprehensive Air Initiative (CAI) was improper and deprived not only Sierra Club but other parties and the Commission of the opportunity to fully evaluate the company's decision making process. We have gone over this issue both in emails and over the phone. Sierra Club's request on this issue was very clear: we asked the Company to identify and provide all CAI documents produced from 1999 through 2012. All evidence indicates that such documents exist, e.g., Chad Teply's testimony, Exhibit PAC/500 repeatedly references the CAI as a plan or policy that guided PacifiCorp's decision making with respect to emissions control projects on the coal fleet. Mr. Teply uses the following words and descriptions of the CAI:

- "development of the Company's [CAI]" (p.5),
- "the Company's CAI has been updated" (p.6)
- "The Company's CAI has been developed and maintained" (p.7)
- "The initial focus of the CAI has been" (p.9)
- "The Company's CAI also includes" (p.9)
- "reductions in SO2 and NOx that are expected to occur...as a result of the Company's CAI" (p.9)
- "projects installed under the Company's CAI" (p.11)
- "As currently planned, the CAI incorporates" (p.11)

Additionally, PacifiCorp produced as part of its response to SC 1.9 (the Deseret Arbitration documents) a document provided to an April 21, 2005 PacifiCorp Board Meeting that stated the need to consider environmental control projects as a "package" and to follow special governance procedures whenever changes or updates to relevant projects were considered. (Exhibit 41, Witness Lawson, PACARB1 000014665-669.)

The Company's initial response to SC 1.4 did not provide any responsive documents, but instead merely responded that the CAI "does not refer to a specific document or plan, but rather the Company's overall air quality and emissions control policy and associated activities." In my May 22 letter, I reiterated our request that PacifiCorp identify and provide documents related to the Company's overall air quality and emissions control policy and associated compliance activities, which was the Company's own re-definition of what the CAI refers to. In response, PacifiCorp simply referred to its responses to SC 1.1-1, 1.3-4, 1.5, 1.10, 1.12, 1.9, 1.37-1 and 1.37-2.

PacifiCorp's 1st supplemental response to SC 1.4 is particularly frustrating because it refers to thousands of pages of responses, the bulk of which are completely irrelevant to the CAI. For instance, SC 1.1-1 is a file that includes the Company's responses to all data requests submitted by parties in this proceeding. Reference to that file is not helpful in identifying what constitutes the CAI. Even after sifting through all of the production in this proceeding, the documents that pertain to the CAI are, at best, individual instances or examples of implementation of the CAI without any description or explanation of what constitutes the Company's "comprehensive" plan or policy.

OPUC Staff submitted a data request (OPUC 137) on March 15, 2012 inquiring about the CAI, and Sierra Club initially submitted its request SC 1.4 on April 13, 2012. Based on PacifiCorp's responses to these requests,

Sierra Club sees only two possible scenarios with respect to the CAI. (1) Despite multiple references and evidence indicating that the CAI was a comprehensive plan or policy developed by the Company, there are in fact no additional documents - other than those produced in this proceeding - developed or maintained by PacifiCorp that constitute a "comprehensive" plan or policy to deal with air quality compliance issues; or (2) PacifiCorp refuses to provide such documents.

If the first scenario is in fact the truth, please provide a response that unequivocally states that PacifiCorp has produced to Sierra Club in this proceeding all planning and policy documents related to the CAI and that no additional documents exist. If the Company does not provide such an unequivocal statement, Sierra Club will have no choice but to proceed with a motion to compel on Tuesday, June 5. This information has been outstanding for months, and Sierra Club has made multiple efforts to resolve the dispute informally.

Finally, I should note that the Company's supplemental response to SC 1.33 is still outstanding. It was my understanding that PacifiCorp had hoped to complete this response yesterday. Sierra Club anticipates that the supplemental response to SC 1.33 will be forthcoming by COB today at the latest.

—

Travis Ritchie  
Associate Attorney  
Sierra Club Environmental Law Program  
85 Second Street, 2nd Floor  
San Francisco, CA 94105  
[415-977-5727](tel:415-977-5727)  
[travis.ritchie@sierraclub.org](mailto:travis.ritchie@sierraclub.org)

# Attachment D



Travis Ritchie &lt;travis.ritchie@sierraclub.org&gt;

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## UE 246 - Sierra Club Data Request 1.4

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**Wallace, Sarah** <Sarah.Wallace@pacificorp.com>

Fri, Jun 1, 2012 at 3:08 PM

To: "travis.ritchie@sierraclub.org" &lt;travis.ritchie@sierraclub.org&gt;, "Dalley, Bryce" &lt;Bryce.Dalley@pacificorp.com&gt;, "Griffith, Bill" &lt;Bill.Griffith@pacificorp.com&gt;

Cc: "gloria.smith@sierraclub.org" &lt;gloria.smith@sierraclub.org&gt;, "Herring, Morgan" &lt;Morgan.Herring@pacificorp.com&gt;, "Hocken, Natalie" &lt;Natalie.Hocken@pacificorp.com&gt;

Travis -

We plan to send the supplemental response to 1.33 today.

As for the response to 1.4, as we discussed on the phone, and as we have tried to explain in our responses to both Sierra Club's request and Staff's, the CAI does not refer to an immutable policy or plan. There is no defined or specific set of documents that embodies the CAI. The Company has provided Sierra Club with thousands of files. All relevant documents, studies, etc., that could be considered "CAI" documents have been included in our responses to Sierra Club, either specifically in response to a Sierra Club request or as part of the copies of responses to other parties' requests.

Your demand that PacifiCorp "unequivocally" state that it has provided every document that exists related to the CAI is an unreasonable request. We have provided all of the documents that we could find that are relevant to this proceeding and responsive to your requests, other than those protected by the attorney-client or work product privileges.

The Company has responded to your data requests thoroughly and in good faith and is not intentionally withholding relevant discoverable material.

In addition to a motion to compel, Oregon has an informal discovery dispute resolution process. Sierra Club may request a telephone conference with the ALJ to informally discuss the dispute. If Sierra Club is dissatisfied with the result of that process, a motion to compel may still be filed. The ALJs know the time sensitivity of these disputes and will try to schedule the conference quickly.

Thank you,  
Sarah

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**From:** Travis Ritchie <travis.ritchie@sierraclub.org>**To:** Wallace, Sarah; Dalley, Bryce**Cc:** Gloria Smith <gloria.smith@sierraclub.org>**Sent:** Fri Jun 01 13:25:44 2012**Subject:** UE 246 - Sierra Club Data Request 1.4

[Quoted text hidden]

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of June, 2012, I caused to be served the foregoing INFORMATIONAL RESOLUTION OF DISCOVERY DISPUTE RE PACIFICORP'S RESPONSE TO SIERRA CLUB DATA REQUEST SC 1-4 on all party representatives on the official service list for this proceeding via electronic mail.

William Ganong  
514 Walnut Ave.  
Klamath Falls, OR 97601  
[wganong@aol.com](mailto:wganong@aol.com)

**Boehm Kurtz & Lowry**  
Jody Kyler  
215 South State St., Ste. 1510  
Cincinnati, OH 45202  
[jkyler@bkllawfirm.com](mailto:jkyler@bkllawfirm.com)

**Davison Van Cleve**  
Irion A Sanger  
Melinda J. Davison  
333 SW Taylor, Ste. 400  
Portland, OR 97204  
[mail@dvclaw.com](mailto:mail@dvclaw.com)

**Esler Stephens & Buckley**  
John W. Stephens  
888 SW Fifth Ave., Ste. 700  
Portland, OR 97204-2021  
[stephens@eslerstephens.com](mailto:stephens@eslerstephens.com)  
[mec@eslerstephens.com](mailto:mec@eslerstephens.com)

**NW Energy Coalition**  
Wendy Gerlitz  
1205 SE Flavel  
Portland, OR 97202  
[wendy@nwenergy.org](mailto:wendy@nwenergy.org)

**Boehm Kurtz & Lowry**  
Kurt J. Boehm  
36 E. Seventh St., Ste. 1510  
Cincinnati, OH 45202  
[kboehm@bkllawfirm.com](mailto:kboehm@bkllawfirm.com)

**Citizens' Utility Board Of Oregon**  
OPUC Dockets  
Robert Jenks  
G. Catriona McCracken  
610 SW Broadway, Ste. 400  
Portland, OR 97205  
[dockets@oregoncub.org](mailto:dockets@oregoncub.org)  
[bob@oregoncub.org](mailto:bob@oregoncub.org)  
[catriona@oregoncub.org](mailto:catriona@oregoncub.org)

**Energy Strategies LLC**  
Kevin Higgins  
215 State St., Ste. 200  
Salt Lake City, UT 84111-2322  
[khiggins@energystrat.com](mailto:khiggins@energystrat.com)

**Klamath Water and Power Agency**  
Hollie Cannon  
735 Commercial St., Ste. 4000  
Klamath Falls, OR 97601  
[hollie.cannon@kwapa.org](mailto:hollie.cannon@kwapa.org)

**PacifiCorp d/b/a Pacific Power**  
Oregon Dockets  
R. Bryce Dalley  
825 NE Multnomah St., Ste. 2000  
Portland, OR 97232-2149  
[oregondockets@pacificorp.com](mailto:oregondockets@pacificorp.com)  
[bryce.dalley@pacificorp.com](mailto:bryce.dalley@pacificorp.com)



**PacifiCorp d/b/a Pacific Power**  
Sarah Wallace  
825 NE Multnomah St., Ste. 1800  
Portland, OR 97232-2149  
[sarah.wallace@pacificorp.com](mailto:sarah.wallace@pacificorp.com)

**Portland General Electric**  
Randy Dahlgren  
121 SW Salmon St., 1WTC0702  
Portland, OR 97204  
[pge.opuc.filings@pgn.com](mailto:pge.opuc.filings@pgn.com)

**Portland General Electric**  
Douglas C. Tingey  
121 SW Salmon St., 1WTC13  
Portland, OR 97204  
[doug.tingey@pgn.com](mailto:doug.tingey@pgn.com)

**Public Utility Commission of Oregon**  
Deborah Garcia  
PO Box 2148  
Salem, OR 97308-2148  
[deborah.garcia@state.or.us](mailto:deborah.garcia@state.or.us)

**PUC Staff – Department of Justice**  
Michael T. Weirich  
Business Activities Section  
1162 Court St., NE  
Salem, OR 97301-4096  
[michael.weirich@doj.state.or.us](mailto:michael.weirich@doj.state.or.us)

**Regulatory & Cogeneration Services Inc.**  
Donald W. Schoenbeck  
900 Washington St., Ste. 780  
Vancouver, WA 98660-3455  
[dws@r-c-s-inc.com](mailto:dws@r-c-s-inc.com)

**Renewable Northwest Project**  
Megan Walseth Decker  
Jimmy Lindsay  
421 SW 6<sup>th</sup> Ave., #1125  
Portland, OR 97204-1629  
[megan@rnp.org](mailto:megan@rnp.org)  
[jimmy@rnp.org](mailto:jimmy@rnp.org)

**Robertson-Bryan, Inc.**  
Stuart Robertson  
9888 Kent St.  
Elk Grove, CA 95624  
[stuart@robertson-bryan.com](mailto:stuart@robertson-bryan.com)

Dated this 5<sup>th</sup> day of June, 2012 at San Francisco, CA.

/s/  
\_\_\_\_\_  
Jeff Speir  
Program Assistant  
Sierra Club  
85 Second St., 2<sup>nd</sup> Fl.  
San Francisco, CA 94105  
(415) 977-5595  
[jeff.speir@sierraclub.org](mailto:jeff.speir@sierraclub.org)