



August 21, 2014

Via Electronic Filing and USPS

Public Utility Commission
Attn: Filing Center
3930 Fairview Industrial Drive SE
PO Box 1088
Salem, OR 97308

Re: Docket No. LC 57 Sierra Club Motion Challenging Confidential Designation

Please find enclosed the original and five (5) copies of Sierra Club's Motion Challenging Confidential Designation in the above-referenced docket.

Please let me know if you have any questions. Thank you.

Respectfully submitted,

/s/ Kadie McShirley

Kadie McShirley
Legal Assistant
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5658
kadie.mcshirley@sierraclub.org

cc: PacifiCorp

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

LC 57

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2013 Integrated Resource Plan

SIERRA CLUB’S MOTION
CHALLENGING PACIFICORP’S
CONFIDENTIAL DESIGNATION;
REQUEST FOR EXPEDITED
REVIEW

In accordance with OAR 860-001-0420 & Protective Order No. 13-095, Sierra Club moves to challenge PacifiCorp’s designation of certain information as confidential in the August 6, 2014 workshop in docket LC 57. The scope of the “information at issue” under OAR 860-001-0080 is the information PacifiCorp alleges has been designated as confidential that was allegedly “used or disclosed” in Sierra Club’s data requests. For this matter, it is the responding party’s burden to show the challenged information is covered by Oregon Rules of Civil Procedure 36(C)(7).

The factual background for this matter is presented in full in Sierra Club’s brief regarding alleged violations of the protective order, filed here concurrently. In that matter, PacifiCorp alleges Sierra Club violated Protective Order 13-095 by disclosing trade secrets or commercially sensitive information in “Sierra Club’s Third Set of Data Requests to Rocky Mountain Power” in Docket No. 20000-446-ER-14 before the Public Service Commission of Wyoming. PacifiCorp has refused to provide any clarification on the specific information in those requests that it views as confidential.

Sierra Club strongly disputes PacifiCorp’s allegations of breach, and challenged the company’s confidentiality designation through an email communication to Chief Grant and

PacifiCorp counsel dated August 18, 2014. Chief Grant directed the parties to work informally to help resolve “what information in the data requests is a concern to PacifiCorp.”¹ As directed by Chief Grant, Sierra Club contacted the company seeking clarification on the data requests.² Instead of working with Sierra Club to help clarify its allegations, PacifiCorp vaguely responded that “it is concerned about every one of the sixteen data requests...because every one of those requests either uses or discloses (or both) confidential information provided during the confidential August 6, 2014 workshop at the Oregon Public Utility Commission.”³

Because the parties could not resolve this informally, Sierra Club moves the Commission to decide this matter. Sierra Club requests that briefing proceed on the same schedule as that of the protective order, such that PacifiCorp responds to this motion on August 26, and Sierra Club will reply on August 29. Sierra Club believes this schedule will help aid the Commission’s resolution of the protective order matter because the issues are related. The questions at issue here are:

1. Whether the alleged violations actually involve trade secrets or sensitive business information covered by ORCP 36(C)(7);
2. Whether PacifiCorp made its designations in good faith, and,
3. Whether PacifiCorp “limited [designations] to the portions of the document that qualify as a protected trade secret or other confidential research, development, or commercial information” under OAR 860-001-0080.

¹ See Attachment 1, Email from Judge Grant to Gloria D. Smith and Sarah Wallace, “RE: Sierra Club’s Notice of Challenge of Designation of Confidential Information,” dated August 18, 2014 5:14 PM.

² See Attachment 2, Email from Gloria D. Smith to Sarah Wallace, “RE: Sierra Club’s Notice of Challenge of Designation of Confidential Information,” dated August 18, 2014 at 6:20 PM.

³ See Attachment 3, Email from Sarah Wallace to Gloria D. Smith, “RE: Sierra Club’s Notice of Challenge of Designation of Confidential Information,” dated August 19, 2014 at 4:33 PM.

Full briefing on these issues is necessary to determine whether the company suffered any harm and whether sanctions should be imposed.

Based on the attached emails between the parties, Sierra Club certifies that it made reasonable efforts to resolve this dispute informally.

Dated: August 21, 2014

Respectfully submitted,

/s/ Gloria D. Smith

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

Attachment 1



Kadie McShirley <kadie.mcshirley@sierraclub.org>

Fwd: Sierra Club's Notice of Challenge of Designation of Confidential Information - Addendum

Gloria Smith <gloria.smith@sierraclub.org>
To: Kadie McShirley <kadie.mcshirley@sierraclub.org>

Thu, Aug 21, 2014 at 3:57 PM

----- Forwarded message -----

From: **GRANT Michael** <michael.grant@state.or.us>
Date: Mon, Aug 18, 2014 at 5:14 PM
Subject: RE: Sierra Club's Notice of Challenge of Designation of Confidential Information - Addendum
To: Gloria Smith <gloria.smith@sierraclub.org>
Cc: "Wallace, Sarah" <Sarah.Wallace@pacificorp.com>

Upon rereading Sierra Club's email I feel the need to address Sierra Club's statement that it "hereby challenges PacifiCorp's 'designation' of confidential all information contained in Sierra Club's data requests under OAR 860-001-0080(2)(d)." I want to clarify that PacifiCorp has not "designated" information in the data requests as confidential. Rather, it designated the information in the presentation to the Commissioners, as well as statements made during that presentation, as confidential.

PacifiCorp now contends that the data requests contained information designated as confidential.

It appears that Sierra Club may have questions as to what information in its data requests is a concern to PacifiCorp. I ask the parties to work informally to help clarify any confusion. Indeed, the Protective Order requires parties to work informally to resolve such disputes under Paragraph 11.

Michael Grant

Chief Administrative Law Judge

Public Utility Commission of Oregon

(503) 378-6102

From: GRANT Michael
Sent: Monday, August 18, 2014 5:03 PM
To: 'Gloria Smith'
Cc: Wallace, Sarah
Subject: RE: Sierra Club's Notice of Challenge of Designation of Confidential Information

I will be out of the office from Aug 19-26 with limited email access. To help clarify things, I provide this quick response.

As I stated today, any party has the right to challenge whether information has been properly designated under a protective order. Sierra Club has now invoked that right, and now PacifiCorp bears the burden of establishing that the designated information falls within the scope of ORCP 36(C)(7). Under Paragraph 15 of Order No. 13-095, PacifiCorp has 7 days to file a response defending its designation.

That inquiry, however, is separate and distinct from the current inquiry as to whether Sierra Club used or disclosed information designated as confidential under the protective order. In this pending matter, the question focuses on the use of the designated information, not whether the information was properly designated. A party may violate the terms of a protective order by disclosing designated information—even if it is later determined that the information disclosed was not properly designated. The protective order forbids a party from using or disclosing designated information for purposes other than the pending proceeding. Again, a party may challenge the designation, but improperly using or disclosing the information before a challenge remains a violation of the protective order.

Michael Grant

Chief Administrative Law Judge

Public Utility Commission of Oregon

(503) 378-6102

From: Gloria Smith [<mailto:gloria.smith@sierraclub.org>]
Sent: Monday, August 18, 2014 4:44 PM
To: GRANT Michael
Cc: Wallace, Sarah
Subject: Sierra Club's Notice of Challenge of Designation of Confidential Information

After further consideration, Sierra Club realizes that we need further information from PacifiCorp to understand the

company's allegations that Sierra Club disclosed or used confidential information in the data requests at issue. We anticipated walking you through each data request, point by the point, and providing an independent basis for each question. Sierra Club did not anticipate a need to challenge the confidential designation, but given your honor's preliminary views of this matter that Sierra Club's Wyoming data requests were prima facie evidence of a breach of the protective order, Sierra Club needs clarification and must formally challenge PacifiCorp's interpretation of the breadth of the protective order.

While Sierra Club strongly disputes PacifiCorp's allegations of breach and disputes that the data requests contain any confidential information, Sierra Club hereby challenges PacifiCorp's "designation" of confidential all information contained in Sierra Club's data requests under OAR 860-001-0080(2)(d). PacifiCorp must show that the challenged information is covered by ORCP 36(C)(7), and that the confidential designation was "made in good faith" and "limited to the portions of the document that qualify as a protected trade secret or other confidential research, development, or commercial information."

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Gloria D. Smith

Senior Managing Attorney
Sierra Club Environmental Law Program
85 Second Street
San Francisco, CA 94105
Phone: (415) 977-5532

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or attorney work product. If you receive this e-mail inadvertently, please reply to the sender and delete all versions on your system.

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Attachment 2

From: Gloria Smith [mailto:gloria.smith@sierraclub.org]
Sent: Monday, August 18, 2014 6:20 PM
To: Wallace, Sarah
Subject: Re: Sierra Club's Notice of Challenge of Designation of Confidential Information - Addendum

Sarah,

In an attempt to resolve this matter informally and for us to file our initial brief this Thursday, Sierra Club needs to understand what information in the data requests filed in the Wyoming docket is of concern to the company. As Chief Grant pointed out, the company did not designate the questions confidential. We understand that confidential data was shared on August 6, however we were very careful in the drafting of the data requests not to use or disclose any of that information.

To be absolutely clear, the "information in dispute" is whatever you contend is confidential in our data requests. Please refer to those data requests and let us know the specific instances where you contend Sierra Club disclosed protected information. Thank you.

Gloria D. Smith
Senior Managing Attorney
Sierra Club Environmental Law Program
85 Second Street
San Francisco, CA 94105
Phone: [\(415\) 977-5532](tel:4159775532)

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

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—

Derek Nelson
Legal Assistant
Sierra Club Environmental Law Program
85 Second Street, Second Floor
San Francisco, CA 94105
Phone: [415-977-5595](tel:4159775595)
Fax: [415-977-5793](tel:4159775793)

Attachment 3



Derek Nelson <derek.nelson@sierraclub.org>

Fwd: Sierra Club's Notice of Challenge of Designation of Confidential Information - Addendum

Derek Nelson <derek.nelson@sierraclub.org>
To: Derek Nelson <derek.nelson@sierraclub.org>

Wed, Aug 20, 2014 at 11:10 AM

From: **Wallace, Sarah** <Sarah.Wallace@pacificorp.com>
Date: Tue, Aug 19, 2014 at 4:33 PM
Subject: RE: Sierra Club's Notice of Challenge of Designation of Confidential Information - Addendum
To: Gloria Smith <gloria.smith@sierraclub.org>

Gloria—

Judge Grant instructed us to “work informally to help clarify” any confusion that Sierra Club may have over “what information in its data requests is a concern to PacifiCorp.” PacifiCorp is concerned about every one of the sixteen data requests included in the original third set of data requests in the Wyoming general rate case because every one of those requests either uses or discloses (or both) confidential information provided during the confidential August 6, 2014 workshop at the Oregon Public Utility Commission. PacifiCorp designated all information in the written presentation and the oral discussion at that workshop as confidential under protective order no. 13-095.

The confidential nature of the workshop was confirmed in Judge Grant’s July 30 memorandum. You correctly note below that PacifiCorp did not designate Sierra Club’s Wyoming data requests as confidential, but it is not PacifiCorp’s role to designate information produced by Sierra Club as confidential. Instead, Sierra Club is obligated under the terms of Order No. 13-095 to protect designated information as confidential and is prohibited from using or disclosing the information for any purpose other than participating in LC 57.

Sarah K. Wallace

Pacific Power | Assistant General Counsel

825 NE Multnomah Street | Suite 1800 | Portland, Oregon 97232

Telephone 503-813-5865 | Cell 503-341-0508

sarah.wallace@pacificorp.com



CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August, 2014, I caused to be served the foregoing SIERRA CLUB MOTION CHALLENGING CONFIDENTIAL DESIGNATION upon the following party representatives via electronic mail.

Oregon Dockets (C)
PacifiCorp, DBA Pacific Power
825 NE MULTNOMAH ST, STE 2000
PORTLAND OR 97232
oregondockets@pacifiCorp.com
Waive Paper Service

Sarah Wallace (C)
Dustin T. Till (C)
Pacific Power
825 NE MULTNOMAH ST, STE 1800
PORTLAND OR 97232-2149
sarah.wallace@pacifiCorp.com
dustin.till@pacifiCorp.com
Waive Paper Service

Dated this 21st day of August, 2014 at San Francisco, CA.

/s/ Kadie McShirley

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