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Commissioner : C. Peterman
ALJ : K. MacDonald
Witness : N. Stannik



**OFFICE OF RATEPAYER ADVOCATES
CALIFORNIA PUBLIC UTILITIES COMMISSION**

**Prepared Testimony Application of
PacifiCorp for Authority to Sell Certain
Mining Assets in Accordance with Public
Utilities Code Section 851**

ORA Prepared Testimony

San Francisco, California
July 11, 2016

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1 **I. INTRODUCTION AND FACTUAL BACKGROUND**

2 In December 2014, PacifiCorp filed Advice Letter (AL) 513-E requesting
3 permission to sell certain coal mining assets under Public Utilities Code Section 851 to
4 Bowie Resource Partners (Bowie). The mining assets consist of a coal preparation plant,
5 a central warehouse near the plant, and the exhausted Trail Mountain Mine. The coal
6 preparation plant and central warehouse are located near PacifiCorp’s coal-burning
7 Hunter Power Plant in Castle Dale, Utah.¹ The Trail Mountain Mine is located near
8 Orangeville in Emery County, Utah.²

9 The mining assets presented in AL 513-E were part of a larger transaction, which
10 also included the transfer of the mining rights at the undeveloped Fossil Rock Mine, an
11 overriding royalty payment on four percent on the “gross sales revenue from the sale of
12 all coal mined from the Coal Leases,”³ and the execution of one new and one revised
13 Coal Supply Agreement (CSA) to supply PacifiCorp’s Huntington and Hunter coal-fired
14 power plants, respectively.

15 In June 2015, PacifiCorp executed the Transaction with Bowie without having
16 received a formal response from the CPUC’s Energy Division regarding AL 513-E. In
17 July 2015, the Energy Division rejected the Advice Letter and directed PacifiCorp to file
18 an Application to resolve the issues presented. In September 2015, PacifiCorp filed
19 Application (A.) 15-09-007 requesting Section 851 approval for sale of the mining assets.

20 The Application was protested by the Sierra Club in October 2015. The Office of
21 Ratepayer Advocates (ORA) requested and was granted party status in May 2016. The
22 Sierra Club and PacifiCorp filed briefs regarding the applicability of the California
23 Environmental Quality Act (CEQA) on June 17, 2016.

¹ PacifiCorp Application (A.)15-09-007, p 6.

² Utah Coal Program, Trail Mountain Mine. (Permit Number: C0150009). November 30, 2006.
<http://linux3.ogm.utah.gov/WebStuff/wwwroot/coaltemp/0150009.html>

³ Asset Purchase and Sale Agreement (Fossil Rock Assets) between Fossil Rock Fuels, LLC and Fossil
Rock Resources, LLC dated December 12, 2014. See:
https://www.sec.gov/Archives/edgar/data/1631790/000104746915005595/a2225124zex-2_1.htm

1 **II. SUMMARY OF RECOMMENDATIONS**

2 The Deer Creek/Fossil Rock Transaction (‘Transaction’) should be considered in
3 its entirety. The sale was executed as a single transaction and has consistently been
4 described as such, and the potential health and safety, environmental, and financial
5 effects to California are not isolated to individual components of the Transaction,⁴ even if
6 the ratebase impacts may be separable by individual components or states.

7 The health and safety impacts resulting from the Transaction have the potential to
8 be significant and should be investigated further. Changes to mining operations, new
9 and/or increased rail traffic through densely populated and environmentally-sensitive
10 areas of California,⁵ and accident or explosion risk from coal dust should be considered
11 by the Commission.

12 The environmental implications of the Transaction have the potential to be
13 significant and the Application should not be approved without environmental review.
14 Changes to mining operations, greenhouse gas emissions considerations, the possible
15 extension of operable life of the Hunter and Huntington plants, and expansion of coal
16 exports through California ports have the potential for significant environmental harm.

17 Financial impacts have not been properly explored and should be further
18 investigated. Specifically, the estimated costs for federally-mandated emissions control
19 technology at the Hunter and Huntington plants could be significant⁶ and have not been
20 taken into account.

21 ORA is not commenting on the ratemaking aspects of the Transaction at this time.⁷
22 However, consequences of other aspects of the Transaction have potential significance to

⁴ For example, the assets are in physical proximity and will be used for interconnected purposes as a direct result of the Transaction. See Section III below.

⁵ BNSF rail lines or lines with trackage rights from Utah to the San Francisco Bay Area pass through Reno, Sacramento, Fairfield, Richmond, the Black Rock Desert, within 10 miles of Pyramid Lake and Lake Tahoe, along the Sacramento River Delta, and along the San Francisco Bay. See Section IV below.

⁶ Estimates range between \$450 million and \$700 million. See Section VI and footnote 88 below.

⁷ ORA’s focus in this proceeding has been on potential safety implications in California. However, ORA has conducted a limited review of the ratemaking aspects of the transaction and does not oppose the Application on those grounds.

1 California outside of PacifiCorp’s ratepayer footprint. The Commission should withhold
2 approval of the Application until the above-noted health and safety, environmental, and
3 financial impacts have been fully and properly investigated. Given that the transaction
4 has already occurred and Commission approval is not a condition precedent to the parties
5 moving forward, delay of the approval should not be an issue.⁸ Alternatively, the
6 Commission could consider a separate safety proceeding regarding the safety,
7 environmental, financial, and policy impacts of increased coal exports through and out of
8 California.

9 **III. CONSIDERATION OF THE DEER CREEK/FOSSIL ROCK**
10 **TRANSACTION**

11 **A. The Commission Should Consider the Transaction in Its Entirety**

12 The Commission should consider the Deer Creek/Fossil Rock Transaction in its
13 entirety, including its reasonably-foreseeable effects. Just as the parties involved in the
14 Transaction see the Transaction as a single package composed of various aspects with
15 differing individual values, the Commission should view the Transaction as a whole with
16 potentially positive and negative implications for the regulated entity, ratepayers, and
17 safety/environmental impacts. As described in the testimony of Ms. Crane (emphasis
18 added), “*In connection with the Deer Creek Mine Closure*, the Company was able to
19 make advantageous sales of some of its remaining Mining Assets to Bowie.”⁹ Ms. Crane
20 further discusses the transactions and justifications for sale of the Mining Assets:¹⁰

21
22 Q. Specifically, why are the Mining Assets included in the Transaction?

⁸ Fossil Rock Omnibus Amendment Agreement, Section 8 Waiver of Conditions Precedent. June 5, 2015.
See: <https://www.lawinsider.com/contracts/5o9bicVmcL434BCqyRkoHe/bowie-resource-partners-lp/omnibus-amendment-agreement/2015-06-19Francisco>.

⁹ Direct Testimony of Crane, 12-15-2014, p. 9.

¹⁰ Direct Testimony of Crane, 12-15-2014, p. 23.

1 A. First, once the Deer Creek Mine is closed and the CSAs go into effect, the burden
2 of stockpiling and blending coal at current levels to achieve compatible coal
3 blends for the power plants is shifted almost entirely to Bowie. Accordingly, the
4 Company no longer needs the Preparation Plant and the Central Warehouse to
5 ensure fuel supply to its plants.

6
7 Second, with respect to Fossil Rock and the Trail Mountain Mine, the new and
8 existing CSAs provide the Hunter and Huntington power plants' with an
9 appropriate volume and quality coal supply at a reasonable cost. Given the
10 competitive third-party supply option, and for all of the reasons stated above, there
11 is no longer any reason to maintain these coal-related assets.

12
13 PacifiCorp chose to execute the Transaction as a single, bundled package and has
14 stated in other proceedings that various aspects of the deal are contingent on each
15 other.^{11,12} PacifiCorp has grouped various aspects of the Transaction together when
16 discussing Bills of Sale and Transaction documentation.¹³ Bowie, the counterparty in the
17 Transaction, has repeatedly referred to the Transaction in its entirety (as “The Utah
18 Transaction”) and even listed “real property” (referring to the warehouse and preparation
19 plant) as a secondary aspect, instead placing primary emphasis on two components of the
20 Transaction that PacifiCorp has attempted to exclude from consideration in California,
21 the sale of the Fossil Rock mining rights and the Coal Supply Agreements.¹⁴

22 PacifiCorp will materially benefit from the sale of coal from the Fossil Rock Mine.
23 PacifiCorp has a four percent overriding royalty “... on the gross sales revenue from the
24 sale of all coal mined from the Coal Leases...”¹⁵ PacifiCorp includes the Coal Supply
25 Agreements as part of the “significant financial benefits for the ratepayers of

¹¹ PacifiCorp Response to Data Request 1.18 of The Sierra Club in Oregon Public Utility Commission docket UM-1712.

¹² PacifiCorp Response to Data Request 1.23 of The Sierra Club in Oregon Public Utility Commission docket UM-1712.

¹³ ORA Data Request 01, Question 2. Attachment email “PacifiCorp_Bowie - Bills of Sale.pdf.” PacifiCorp confirmed to ORA via email on July 7, 2016 that the text of the email does not require confidential treatment.

¹⁴ Bowie Resource Partners LP Form S-1, United States Securities and Exchange Commission. June 15, 2015. See: <https://www.sec.gov/Archives/edgar/data/1631790/000104746915005595/a2225124zs-1.htm>. p. 6.

¹⁵ Asset Purchase and Sale Agreement (Fossil Rock Assets) December 12, 2014.

1 California.”¹⁶ The Coal Supply Agreement with Huntington Power Plant, the Trail
2 Mountain Assets, Preparation Plant Assets, Central Warehouse Plant Assets, are all part
3 of the same Omnibus Agreement dated June 5, 2015 that includes discussion of the
4 payment of over \$1.4 million in royalties to PacifiCorp.¹⁷

5 Due to the overriding royalty, PacifiCorp retains a financial stake in the extraction
6 of resources from the Fossil Rock Mine, some share of which are likely to be paid by
7 California ratepayers as part of the Coal Supply Agreements for the Huntington and
8 Hunter Power Plants. PacifiCorp did not include the royalty benefits as part of the benefit
9 calculations in its filing before this Commission or the Utah Commission.¹⁸ PacifiCorp
10 has stated before the Utah Commission that “[i]n the event the royalty comes to fruition
11 in the future, the Company would pass the benefits (net of tax) onto customers to the
12 extent it is made whole on any Transaction losses.”¹⁹

13 The components of the Transaction are interdependent and directly related to each
14 other. Some of the physical assets (the preparation plant and central warehouse) that were
15 previously used in connection with the Deer Creek Mine will now be used by Bowie to
16 meet its obligations under the new Hunter and Huntington Coal Supply Agreements.²⁰
17 The CSAs are necessary because PacifiCorp is closing the Deer Creek Mine and requires
18 new sources of coal for the Hunter and Huntington plants.²¹ The Trail Mountain Mine is
19 directly adjacent to the Fossil Rock Mine and could be used as an access point to Fossil
20 Rock.²² The Fossil Rock reserves, although undeveloped, have been pre-approved in the
21 CSAs to supply coal to the Hunter and Huntington plants.²³ The elements of the

¹⁶ Application, pp. 3-4

¹⁷ Fossil Rock Omnibus Amendment Agreement, June 5, 2015.

¹⁸ Direct Testimony of Crane, 12-15-2014, p. 12.

¹⁹ Direct Testimony of Crane, 12-15-2014, p. 26.

²⁰ Fossil Rock Omnibus Amendment Agreement, June 5, 2015.

²¹ Application, p. 4.

²² United States Forest Service; Fossil Rock Fuels LLC Coal Exploration Drilling. See:
<http://www.fs.usda.gov/project/?project=38228>

²³ Information provided to ORA by PacifiCorp at an in-person meeting on June 20, 2016 at the CPUC in San Francisco. PacifiCorp confirmed to ORA via email on July 7, 2016 that the cited statement does not

1 Transaction are in physical proximity to each other, have interconnected and intersecting
2 uses, and cannot be reasonably isolated into distinct, isolated components.

3 PacifiCorp and Bowie presumably engaged in some form of negotiation and
4 internal determination of the business value for the Transaction as a whole. As a profit-
5 seeking entity, it is difficult to imagine Bowie accepting mine remediation costs,²⁴
6 significant pension liabilities and penalties,²⁵ and royalty payment obligations²⁶ (all of
7 which PacifiCorp transfers to Bowie as part of the Transaction) without receiving some
8 economic or other value judged acceptable, equivalent, or advantageous in return. The
9 Transaction should be evaluated holistically, taking into accounts all risks, benefits, and
10 other aspects.

11

12 **B. In Considering the Transaction in Its Entirety, Reasonably-Foreseeable**
13 **Effects of the Transaction Should Be Considered**

14 In considering the transaction in its entirety, the Commission should consider
15 reasonably-foreseeable effects of executing the Transaction.

16 ORA agrees with the Sierra Club that the Commission cannot rule out non-trivial
17 safety, environmental, and health impacts of the use of the Trail Mountain Mine²⁷ and the
18 execution of the 15-year Coal Supply Agreements.²⁸ Bowie's use of the assets involved
19 in this Transaction (especially the Fossil Rock Mine) to export coal through existing or
20 under-development California ports is a reasonably-foreseeable outcome, if not a likely
21 one. The greenhouse gas emissions associated with such export have the potential to be
22 significant.²⁹

require confidential treatment.

²⁴ Application, p. 2.

²⁵ Application, p. 6.

²⁶ Bowie S-1, p. 147, footnote (1).

²⁷ Sierra Club Brief on CEQA Applicability, June 17, 2016, pp. 4-6.

²⁸ Sierra Club Brief on CEQA Applicability, June 17, 2016, pp. 11-14.

²⁹ See Section V below.

1 Bowie’s involvement and interest in coal exports through California is well-
2 established. In a June 2015 S-1 financial filing with the Securities and Exchange
3 Commission, Bowie listed an export capacity of 1.7 million tons per year via the Levin-
4 Richmond Terminal, 4.0 million tons per year via the Port of Stockton, and an
5 unspecified tonnage via the Port of Long Beach.³⁰ Bowie describes itself as the “only
6 coal producer with contracted U.S. West Coast export capacity.”³¹ In providing a sample
7 calculation as part of the agreement, PacifiCorp references the Stockton export terminal,
8 acknowledging Bowie’s involvement in coal exports.³²

9 Bowie is actively pursuing expansion of its coal operations through both coal
10 reserve acquisitions and expanded coal export capacity. In its S-1 filing, Bowie lists three
11 of its primary business strategies as “growing production and operating cash flows,”
12 “utilizing our sponsor's export capacity to expand the size and diversity of our coal sales
13 portfolio,” and “continuing to develop and grow our reserve base.”³³ Bowie also stated
14 “We expect export coal markets to have the potential to provide significant growth
15 opportunities relative to the domestic coal market”³⁴ and cited a Wood Mackenzie
16 analysis regarding the long-term coal market conditions in the “Pacific Rim.”³⁵

17 Bowie intends to export coal mined in Utah (or coal mined elsewhere that is offset
18 or displaced by coal mined in Utah). In its S-1 filing, Bowie describes its plans to expand
19 the existing Dugout Canyon mine, efforts to “obtain a lease ... for the Greens Hollow
20 tract,” and its intent to utilize its existing Sufco mine³⁶ to access new seams as
21 components of its efforts to continue to grow and develop its reserve base.³⁷ Finally,

³⁰ Bowie S-1, p. 39.

³¹ Bowie S-1, p. 4.

³² PacifiCorp Response to ORA data request ORA-PacifiCorp-MiningAssets-02, Q8.

³³ Bowie S-1, pp. 3-4.

³⁴ Bowie S-1, pp. 4-5.

³⁵ Bowie S-1, p. 7.

³⁶ Bowie S-1, p. 34 (map of Bowie Resource Partner mines).

³⁷ Bowie S-1, p. 4.

1 Bowie explicitly describes the reserve expansion that the Fossil Rock Mine (included in
2 this Transaction) represents, stating:

3
4 *“The Fossil Rock reserves increase our proven and probable reserves by an*
5 *estimated 11.2 million tons and 32.5 million tons, respectively, and at full*
6 *production, we expect to produce approximately 4.0 million tons of coal per year*
7 *from the Fossil Rock reserves from 2017 through 2034.”³⁸ [emphasis added]*

8
9 Bowie further estimates that the development of the Fossil Rock reserves will cost
10 approximately \$100million.³⁹ PacifiCorp’s assertions⁴⁰ that Bowie’s plans to develop
11 Fossil Rock are unknown or unlikely are contradicted by publically available information
12 about Bowie’s intention to develop the reserves, estimates of maximum and total
13 production, and concrete estimated development costs.

14 The estimated value of the coal in the Fossil Rock Mine is approximately \$1.7
15 billion.⁴¹ Coal prices in Asia are generally substantially higher⁴² than in the United States,
16 and ranged from \$55/ton (South Korea) to \$99/ton (China), potentially raising Fossil
17 Rock reserve values to \$2.3 to 4.1 billion.⁴³

18 The new Coal Supply Agreements between Bowie and PacifiCorp “provide for
19 sales to PacifiCorp of a minimum of 2.0 million tons and a maximum of 3.0 million tons
20 of coal per year through 2029.”⁴⁴ Bowie states that the “new 15-year coal supply

³⁸ Bowie S-1, p. 4.

³⁹ Bowie S-1, p.116.

⁴⁰ Reply of PacifiCorp to Protest of Sierra Club, November 2, 2015, p. 8.

⁴¹ 41,660,000 tons x \$41/ton = \$1,708,060,000. See PacifiCorp Response to ORA Data Request ORA-PacifiCorp-MiningAssets-01, Question 4 and “Coal Commodity Spot Prices, Energy Information Agency.” See: <https://www.eia.gov/coal/markets/>

⁴² Energy Information Agency, Coal data Browser; <http://www.eia.gov/beta/coal/data/browser/> Sample China and South Korea price trends included in ORA Supporting Attachments (Ex. ORA-02),

⁴³ 41,660,000 tons x \$55/ton = \$2,291,300,000. 41,660,000 tons x \$99/ton = \$4,124,340,000. See also footnote 41 above.

⁴⁴ Bowie S-1, p. F-42.

1 agreement with PacifiCorp for delivery to the Huntington Power Plant ... will be
2 supplied via truck from our Skyline mine,”⁴⁵ indicating that Fossil Rock will not be used
3 to supply Huntington. As noted above, Bowie also states “At full production, we expect
4 to produce approximately 4.0 million tons of coal per year from the Fossil Rock reserves
5 from 2017 through 2034.”⁴⁶ Even without accounting for the contribution of the Skyline
6 Mine as described above, the difference between the output of the Fossil Rock Mine and
7 the maximum delivery to PacifiCorp is 1 to 2 million tons of coal annually.

8 Bowie is actively involved and financially invested in the development of the
9 Oakland Global Trade and Logistics Center (Oakland Terminal) in Oakland, California,
10 in conjunction with Sevier, Emery, Carbon and Sanpete Counties of Utah.^{47,48} Bowie’s
11 executive chairman has confirmed that his company “has a vested interest in Terminal
12 Logistics Solutions,”⁴⁹ the developer of the Oakland Terminal. A term sheet between
13 Oakland Terminal financier Jeffrey Holt and four Utah counties providing funding for the
14 Terminal states:

15
16 *“Bowie Resource Partners (BRP) will be the Series A shareholder and will*
17 *contribute throughput guarantees sufficient to secure \$200 million in (unrated)*
18 *project debt.”⁵⁰ [emphasis added]*

19

⁴⁵ Bowie S-1, p. 78.

⁴⁶ Bowie S-1, p. 127.

⁴⁷ The State of Utah’s Governor’s Office of Energy Development has reported an investment of \$53 million as part of a deal involving the building of an export facility in Oakland. See <http://energy.utah.gov/utah-invests-53-million-in-california-port-for-coal-other-exports/>

⁴⁸ On June 27, 2016, the City of Oakland passed a resolution prohibiting the storage and handling of bulk coal within the city, which would include the property under development by TLS. However, project developers have threatened legal action and the resolution’s immediate effects are unclear. See: www.nytimes.com/2016/06/29/us/oakland-coal-transport-ban.html

⁴⁹ Salt Lake Tribune, March 27, 2016. <http://www.sltrib.com/home/3699366-155/proponents-buried-coals-role-in-oakland>

⁵⁰ Preliminary Term Sheet, Multi-Commodity Bulk Export Terminal. Provided by Emery County, Utah in response to public records act request. See: <http://nocoalinoakland.info/wp-content/uploads/2016/03/Jeff-Holt-Email-with-3-Attachments-3-25-2015.pdf>

1 The same memo lists the Terminal’s capacity as “9.5mm metric tons of bulk
2 product per year” including “black product (coal)” and states “Coal not to initially exceed
3 49% of throughput on an annual basis – (internal policy only, not restricted by
4 permits).”⁵¹

5 Bowie’s substantial ownership of coal supply and export assets, explicitly stated
6 desire and ability to increase coal export capacity, explicitly stated desire to develop the
7 Fossil Rock Mine (along with an official cost estimate), and confirmed financial stake
8 and interest in the Oakland Terminal (as well as existing export terminals) show that
9 expanded coal exports through California and California ports are a reasonably-
10 foreseeable effect of the Transaction.

11 **IV. HEALTH AND SAFETY IMPACTS HAVE THE POTENTIAL TO BE** 12 **SIGNIFICANT**

13 The safety-related impacts of the Transaction have the potential to be significant.
14 Although ORA’s preliminary analysis has not discovered safety concerns with the other
15 Transaction party (Bowie),⁵² there may be safety impacts that warrant further
16 consideration and could fall into four general categories:

17
18 1. Increased accident risk resulting from expanded mining activity:

19 PacifiCorp’s Coal Supply Agreements will likely see substantial increases
20 in the truck traffic in and around Huntington, Utah. The Deer Creek Mine
21 (which will be closed as a result of the transaction),⁵³ supplied coal via
22 conveyor belt directly from the mine mouth. There are no non-truck access
23 routes to the Hunter or Huntington power plants.⁵⁴ The depreciable lives of

⁵¹ Term Sheet.

⁵² PacifiCorp Response to ORA Data Request ORA-PacifiCorp-MiningAssets-01, Question 7.

⁵³ Application, p. 4.

⁵⁴ PacifiCorp Response to ORA Data Request ORA-PacifiCorp-MiningAssets-01, Question 3.

1 the Huntington and Hunter plants in California run through 2036 and
2 2042,⁵⁵ meaning potentially 20 or more years of additional vehicle traffic
3 and the associated safety risks.

- 4
- 5 2. Increased accident risk resulting from increased rail traffic: The
6 undeveloped Fossil Rock Mine contains in excess of 41 million tons of coal
7 reserves.⁵⁶ As described above, it is at least reasonably foreseeable that
8 large amounts of these reserves would be exported through California by
9 rail, or would displace other regional coal supplies that can then be
10 exported through California.

11 Terminal Logistics Solutions (see Section III-B above) states that the
12 Oakland Terminal will “receive up to three unit trains of 114 rail cars per
13 day,”⁵⁷ which will stretch well over one mile long each.⁵⁸

14 Regardless of cargo, rail traffic carries inherent risk, including:
15 derailment, collision, or similar accident; delay of emergency or crucial
16 infrastructure vehicles/personnel; infrastructure damage; and worker risk in
17 operation, loading, and unloading. The nature and magnitude of these risks
18 and potential mitigation strategies should be explored further.

- 19
- 20 3. Increased derailment and explosion risk resulting from coal dust: coal dust
21 blown off of rail cars reduces friction on rails, increasing the risks of
22 derailment^{59,60} and reducing braking ability. Coal trains from Utah to

⁵⁵ Application, p. 4.

⁵⁶ DR-01, Question 4.

⁵⁷ TLS, Frequently Asked Questions, accessed June 17, 2016. <http://tloakland.com/faq/>

⁵⁸ BNSF Coal Cars (car specifications). Accessed June 17, 2016. See:
<http://www.bnsf.com/customers/equipment/coal-cars/>

⁵⁹ United Kingdom Rail Accident Investigation Branch Report, Autumn Adhesion Report, August 2005.
See:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412014/070108_R252006_Part_3_Adhesion_Review.pdf

1 California are likely to primarily use Burlington Northern and Santa Fe
2 (BNSF)'s northern Nevada trackage rights⁶¹ on lines that pass through large
3 cities including Reno, Sacramento, Fairfield, Richmond, and Berkeley.
4 Alternative routes in the San Francisco Bay Area could include Stockton,
5 Livermore, Fremont, and Antioch.

6 Coal dust is explosive⁶² when suspended in air due to its high
7 relative surface area. If coal cars were to be covered in route from Utah (for
8 example, to mitigate some of the health risks described below), the
9 possibility exists that a volatile, explosive air-dust mixture could form
10 inside the cars from turbulence, leading to an increased explosion risk if
11 exposed to static electricity, internal spark, power wires, electrical
12 equipment malfunction, lightning strike, etc.⁶³

13 Bowie has reportedly requested covered cars and terminals to
14 minimize coal dust,⁶⁴ but it is unclear which state or federal agency (if any)
15 has the jurisdiction to require or enforce such implementation and whether
16 this request is under consideration for the Oakland Terminal.

- 17
18 4. Increased health risk resulting from coal dust: coal dust contain significant
19 amounts of PM 2.5 fine particulate matter, as well as toxins including

⁶⁰ New York Times "Railroads, Utilities Clash Over Dust From Coal Trains" January 25, 2010.
<http://www.nytimes.com/gwire/2010/01/25/25greenwire-railroads-utilities-clash-over-dust-from-coal-55265.html>

⁶¹ Aberdeen Carolina & Western Railway Company, System Map of BNSF Railway. See:
<http://www.acwr.com/economic-development/rail-maps/bnsf>. See ORA's Supporting Attachments (Ex. ORA-02) for a screenshot of the interactive map.

⁶² National Institute for Occupational Safety and health (NIOSH): Coal dust. Accessed June 17, 2016.
See: <http://www.cdc.gov/niosh/npg/npgd0144.html>

⁶³ "An Assessment of the Health and Safety Implications of Coal Transport through Oakland", Public Health Advisory Panel on Coal in Oakland, p. 47. June 14, 2016. See: http://www.humanimpact.org/wp-content/uploads/Assessment_Health_Safety_Coal_Oakland.pdf

⁶⁴ Richfield Reaper, "Project could transform local coal market to international" April 7, 2015.
http://www.richfieldreaper.com/news/local/article_e13121f0-dd67-11e4-b956-3ff480cc1929.html

1 mercury, lead, arsenic, cadmium, and silica,⁶⁵ which are well known to be
2 harmful to human health. There is no known safe level of exposure to PM
3 2.5 pollution.⁶⁶

4 Potential derailments and coal or diesel spills into waterways or
5 reservoirs also pose clear health risks.

6 **V. ENVIRONMENTAL IMPACTS HAVE THE POTENTIAL TO BE** 7 **SIGNIFICANT**

8 The Transaction has potentially significant negative environmental impacts,
9 including physical changes to the mines, local and regional effects from coal dust, and
10 global effects from the burning of millions of tons of coal.

11 For the reasons described above, the Transaction should be viewed holistically,
12 including the Fossil Rock mining rights and Coal Supply Agreements. PacifiCorp's
13 assertion that the assets will be "used in the same manner as they were before"⁶⁷ and
14 therefore will not have new environmental impacts can only be maintained under the
15 assumption that certain assets are excluded from consideration and that the assets can be
16 viewed individually. For the reasons described in Section III, these are unreasonable
17 assumptions; in the case of the Fossil Rock Mine, Bowie has explicitly stated its desire
18 and intention to develop the Fossil Rock Mine, and even provided a cost estimate for
19 such development (see Section III-B). Likewise, PacifiCorp's statement that "no new
20 mining rights are created by the Transaction"⁶⁸ is misleading in that 1) PacifiCorp
21 unreasonably excludes the Fossil Rock mining rights from consideration and 2) in the
22 case of the Fossil Rock Mine, the fact that unused mining rights are being *transferred*

⁶⁵ "An Assessment of the Health and Safety Implications of Coal Transport through Oakland", p. v.

⁶⁶ "An Assessment of the Health and Safety Implications of Coal Transport through Oakland", p. 15.

⁶⁷ Application, p. 11.

⁶⁸ Application, pp. 11-12.

1 from a party that is not using them to a party that intends to use them means they are in
2 effect being created.

3 Setting aside the potential for the Fossil Rock coal reserves to be shipped and
4 exported through California, the issues regarding the environmental changes resulting
5 from the physical use of the Trail Mountain Mine and Fossil Rock Mine raised by Sierra
6 Club in its CEQA applicability brief⁶⁹ deserve further consideration from an
7 environmental impact perspective.

8 The potentially most significant impacts of mining the Fossil Rock Reserves,
9 however, could come from the export of this coal (or the export of coal displaced by
10 mining Fossil Rock) through California and out of California ports. As outlined above,
11 such export is reasonably foreseeable, if not likely. A minimum of 4.75 million tons of
12 coal⁷⁰ shipped through Oakland would have both regional and global environmental
13 consequences. Regionally and locally, the coal dust associated with the transport of
14 millions of tons per coal annual could exceed 68,300 tons per year.⁷¹ Coal dust has well-
15 documented effects on human health and contains metals that are toxic to humans,
16 wildlife, and water quality.⁷² Covering coal cars and terminals could create additional
17 safety concerns and would not necessarily mitigate these concerns.⁷³ It is also unclear
18 what agency has the jurisdiction to enforce such mitigation (see Section IV).

19 The carbon dioxide emissions resulting from burning 4.75 million tons of coal are
20 approximately 13.6 million tons per year,⁷⁴ equivalent to over 3% of California’s total
21 2014 carbon dioxide-equivalent emissions.⁷⁵ This does not include the greenhouse gas

⁶⁹ Sierra Club Brief on CEQA Applicability, June 17, 2016, pp. 4-9.

⁷⁰ See Section III-B and footnote 50 above.

⁷¹ Environmental, Health and Safety Impacts of the Proposed Oakland Bulk and Oversized Terminal, Fox, P.

⁷² “An Assessment of the Health and Safety Implications of Coal Transport through Oakland”, pp. 29-32.

⁷³ See Section IV.

⁷⁴ Carbon Dioxide Emission Factors for Coal, Energy Information Agency. See: http://www.eia.gov/coal/production/quarterly/co2_article/co2.html

⁷⁵ California Greenhouse Gas Emission Inventory - 2016 Edition, California Air Resources Board. See: <http://www.arb.ca.gov/cc/inventory/data/data.htm>

1 emissions associated with mining, processing, and shipping coal, both from Utah to
2 California and from California ports to Asia. The contribution of carbon dioxide and
3 other greenhouse gases to global climate change is well established,⁷⁶ as is the possibility
4 for regional effects on California and the American west, including elevated particulate
5 pollution in California due to coal combustion in Asia.⁷⁷ California has explicitly stated
6 its intent to reduce its greenhouse gas emissions and global environmental impacts when
7 implementing policies such as greenhouse gas cap-and-trade markets, renewable portfolio
8 standards, expansion of electric vehicle infrastructure, and technological support for
9 renewable energy technologies.⁷⁸ Allowing a coal export terminal to proceed without
10 environmental review would directly contradict California’s stated environmental policy
11 goals.

12 The possibility that PacifiCorp’s new or revised Coal Supply Agreements will
13 extend the economic life of the Hunter and Huntington plants cannot be ruled out at this
14 time. PacifiCorp has confirmed that “the company evaluates pricing and other terms of
15 coal supply agreements when evaluating the economic viability of major capital
16 investments for coal-fired plants” and further states that these analyses can include
17 evaluations of “early retirement, change in dispatch, and fuel-switching.” Such
18 assessments would take into account “liquidated damages and/or costs associated with
19 minimum take obligations.”⁷⁹ The requirements to install federally-mandated emissions
20 control technology,⁸⁰ increased market pressure from natural gas and renewables,
21 potential water supply issues, and rising operations & maintenance costs⁸¹ could all
22 conceivably contribute to the closure of the plants before their depreciable lives are over.

⁷⁶ International Panel on Climate Change, 2014 Synthesis Report – Summary for Policymakers. See: https://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf

⁷⁷ “An Assessment of the Health and Safety Implications of Coal Transport through Oakland”, pp. 33-34.

⁷⁸ AB 32 Scoping Plan Concept Paper, June 17, 2016. See: http://www.arb.ca.gov/cc/scopingplan/document/2030_sp_concept_paper2016.pdf

⁷⁹ ORA data request ORA-PacifiCorp-MiningAssets-03, Question 1.

⁸⁰ See discussion in Section VI below.

⁸¹ DR-01, Question 5, Attachment “Attach ORA 1.5.xlsx”

1 The Coal Supply Agreements in particular could provide a disincentive to close these two
2 potentially otherwise-uneconomic plants that annually emit over 15.2 million tons of
3 carbon dioxide.⁸² For a discussion of the financial impacts of the Coal Supply
4 Agreements and Selective Catalytic Reduction technology, please see Section VI below.

5 As described above, there is a foreseeable chance that the Transaction will directly
6 lead to more coal being mined and shipped through and out of California and burned in
7 countries with weaker environmental regulations in Asia. In addition, there are
8 environmental considerations regarding mine remediation and power plant life extension
9 which warrant further review.

10 **VI. FINANCIAL IMPACTS REQUIRE FURTHER INVESTIGATION**

11 In its Application, PacifiCorp states that it “does not seek to change its rates in
12 connection with this Application.”⁸³ However, the financial implications of the
13 Transaction, much like the health and safety and environmental implications, extend
14 beyond the sale of mining assets that PacifiCorp describes.

15 PacifiCorp has not demonstrated that the Coal Supply Agreements negotiated with
16 Bowie are in the public interest. While PacifiCorp states that “overall coal costs are lower
17 primarily due to the closure of the Deer Creek Mine in 2015 and the coal supply
18 agreement with Bowie...,”⁸⁴ this alone does not justify the CSAs. Specifically,
19 PacifiCorp does not demonstrate that a locked-in coal price for the next 10 years is a
20 prudent part of the Transaction and has not addressed concerns that the CSAs could
21 extend the economic life of two coal plants. Specifically, the US Environmental
22 Protection Agency’s (EPA) requirements for Hunter and Huntington to install Selective
23 Catalytic Reduction (SCR) technology is explicitly not accounted for in PacifiCorp’s

⁸² North American Power Plant Emissions, Commission for Environmental Cooperation. See:
<http://www2.cec.org/site/PPE/co2emissions?page=24&order=title&sort=asc>

⁸³ Application, p. 4.

⁸⁴ Application, p. 3, footnote 3.

1 operations and maintenance costs through at least 2025,⁸⁵ a factor that has contributed to
2 the closure of dozens of coal plants nationwide.⁸⁶ In a similar proceeding before the
3 Oregon Public Utility Commission asking for approval of the Transaction, PacifiCorp
4 acknowledged that at least one component of the Transaction (the Hunter CSA) “does not
5 specifically address the effect of existing or new environmental regulations.”⁸⁷ Cost
6 estimates to install Selective Catalytic Reduction technology on the Hunter and
7 Huntington coal plants range between \$450million (EPA estimate) and \$700million
8 (PacifiCorp estimate).⁸⁸ See discussion in Section V above.

9 **VII. TRANSACTION AUTHORIZATION CONSIDERATIONS**

10 **A. The Commission Should Not Authorize the Deer Creek/Fossil Rock** 11 **Transaction Until the Above Concerns Have Been Fully Addressed**

12 As described above, the reasonably-foreseeable health and safety, environmental,
13 and financial consequences of the Transaction are significant. The Commission should
14 not authorize the Deer Creek/Fossil Rock Transaction until these concerns have been
15 fully addressed through further investigation.

16 If the Commission determines that a CEQA analysis is required, the Application
17 should be suspended or rejected until such an analysis can be performed, ideally in
18 parallel with a safety analysis. If the Commission does not undertake a CEQA analysis,
19 the Application should be suspended or rejected until a health and safety analysis of the
20 issues described above (Section IV) can be fully analyzed.

⁸⁵ DR-01, Q5, Attachment “Attach ORA 1.5.xlsx”

⁸⁶ “Planned Coal-fired Power Plant Retirements Continue to Increase,” Energy Information Agency. March 20, 2014. <http://www.eia.gov/todayinenergy/detail.cfm?id=15491#>

⁸⁷ PacifiCorp Response to Data Request 1.26 of The Sierra Club in Oregon Public Utilities Commission docket UM-1712.

⁸⁸ PacifiCorp Comments on EPA Docket EPA-R08-OAR-2015-0463, footnote 2 (pages 2-3). Available at: <https://www.regulations.gov/document?D=EPA-R08-OAR-2015-0463-0162>

1 If the Commission were to approve the Application without a CEQA analysis, a
2 safety rulemaking should be opened to consider the potential risks associated with coal
3 export through California and California ports, and how these risks can be reduced or
4 mitigated, similar to the Commission’s Interagency Working Group on Oil by Rail.⁸⁹
5

⁸⁹ CPUC Oil by Rail Safety, See <http://www.cpuc.ca.gov/General.aspx?id=990>.

1 **VIII. WITNESS QUALIFICATIONS**

2 Q.1 Please state your name and address.

3 A.1 My name is Nils Stannik. My business address is 505 Van Ness Avenue, San
4 Francisco, California, 94102.

5

6 Q.2 By whom are you employed and in what capacity?

7 A.2 I am employed by the California Public Utilities Commission as a Utilities
8 Engineer in the Office of Ratepayer Advocates' Energy Safety and Infrastructure
9 Branch.

10

11 Q.3 Briefly describe your educational background and work experience.

12 A.3 I have a Bachelor of Engineering degree in Electrical Engineering from the
13 University of Michigan. I am a California-registered Engineer in Training (EIT),
14 number 151746.

15

16 Prior to joining ORA, I worked as an engineer designing and permitting residential
17 photovoltaic systems throughout California. Prior to that, I worked as an electrical
18 engineer on power and instrumentation technologies for large fossil power plants.

19

20 Since joining the ORA in 2014, I have worked on PG&E's 2015 Gas Transmission
21 and Storage Application (A.13-12-012), SoCalGas's/SDG&E's 2016 Triennial
22 Cost Allocation Proceeding (A.14-12-017), SoCalGas's/SDG&E's Pipeline Safety
23 and Reliability Memorandum Account Application (A.14-12-016), the San
24 Joaquin Valley Disadvantaged Community OIR (R. 15-03-010), Liberty Utilities'
25 General Rate Case (A. 15-05-008), SDG&E's Wildfire Expense Memorandum
26 Account Proceeding (A. 15-09-010), and the Safety and Modeling Assessment
27 Proceeding (SMAP, A. 15-05-002).

28

29 Q.4 What is your area of responsibility in this proceeding?

1 A.4 I am responsible for ORA's testimony in this proceeding.

2

3 Q.5 Does that complete your prepared testimony?

4 A.5 Yes, it does.