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November 1, 2016

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-3899

Attn: Filing Center

Re: UM 1610 – PacifiCorp’s Motion for Modified Protective Order

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket its Motion for Modified Protective Order.

If you have questions about this filing, please contact Natasha Siores at (503) 813-6583.

Sincerely,

R. Bryce Dalley
Vice President, Regulation

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of PacifiCorp's Motion for Modified Protective Order on the parties listed below via electronic mail in compliance with OAR 860-001-0180.

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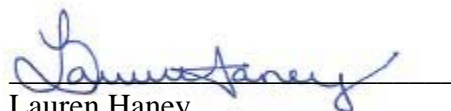
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Dated this 1st day of November, 2016.


Lauren Haney
Coordinator, Regulatory Operations

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1610

In the Matter of
PUBLIC UTILITY COMMISSION OF
OREGON

Investigation Into Qualifying Facility
Contracting and Pricing.

**PACIFICORP’S MOTION FOR
MODIFIED PROTECTIVE ORDER**

1 **I. INTRODUCTION**

2 Under OAR 860-001-0420 and OAR 860-001-0080(3), PacifiCorp d/b/a Pacific
3 Power (PacifiCorp or Company) moves the Public Utility Commission of Oregon
4 (Commission) for entry of a Modified Protective Order in this proceeding. Specifically,
5 PacifiCorp requests the Administrative Law Judge (ALJ) issue the Modified Protective Order
6 attached as Attachment A to this Motion. A Modified Protective Order would provide
7 additional protection for highly commercially sensitive, non-public information related to
8 bids received in response to PacifiCorp’s 2016 renewable resource request for proposals
9 (RFP).

10 On October 27, 2016, ALJ Kirkpatrick partially granted REC’s motion to compel and
11 directed PacifiCorp to respond to REC Data Request 11.8, but stated that PacifiCorp may
12 submit a request for a modified protective order before responding.

13 **II. BACKGROUND**

14 The remaining issue in UM 1610 Phase II involves third-party transmission costs
15 associated with moving a QF’s output from a load pocket to another area on the utility’s
16 system. In Order No. 14-058, the Commission ruled that “any costs imposed on a utility that
17 are above the utility’s avoided costs must be assigned to the QF in order to comport with

1 PURPA avoided cost principles.”¹ In Order No. 16-174, the Commission directed parties to
2 work together to resolve how to calculate and assign third-party transmission costs
3 attributable to a QF in a load pocket.²

4 REC seeks copies of confidential materials from the July 26, 2016 special public
5 meeting related to the 2016 renewable resource RFP. For each bid in the 2016 renewable
6 resource RFP, REC also asks PacifiCorp to identify the location of the generation resource,
7 the assumed transmission costs, and whether it was located in a load pocket. PacifiCorp
8 objected to this request as overly broad, unreasonably burdensome, and not reasonably
9 calculated to lead to the discovery of admissible evidence. On September 14, 2016, REC
10 filed a motion to compel disclosure of this information. In its response, PacifiCorp
11 maintained its objections and stated that disclosing this commercially sensitive bid
12 information to REC would undermine the competitive nature of the renewable resource RFP
13 process.

14 The Commission issued a protective order in this proceeding on November 27, 2012.³
15 PacifiCorp requests a modified protective order that will protect the competitive marketplace
16 while simultaneously allow PacifiCorp to provide the information it has been ordered to
17 produce in discovery.

18 III. REQUEST FOR ADDITIONAL PROTECTION

19 OAR 860-001-0080(3)(a) contains five requirements for seeking a modified
20 protective order. This motion addresses each of these requirements in the following
21 subsections.

¹ *In re Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 22 (Feb. 24, 2014).

² *In re Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 3 (May 13, 2016).

³ *In re Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 12-461 (Nov. 27, 2012).

1 **A. Exact Nature of the Information Involved (OAR 860-001-0080(3)(a)(A)).**

2 PacifiCorp has been ordered to provide confidential materials presented to the
3 Commission at the July 26, 2016 special public meeting that relate to the 2016 renewable
4 RFP. These materials include the Company’s financial evaluation of initial shortlist resource
5 bids for both QF and non-QF resources (including bidder name, project name, resource type,
6 bid type, commercial operation date, state, size, capacity factor, third party transmission
7 provider, bidder’s offer price, PacifiCorp cost, nominal levelized cost, nominal levelized
8 benefit, and net cost or benefit calculation). For each bid in the renewable resource RFP,
9 REC asks the Company to identify the location of the generation resource, the assumed
10 transmission cost, and whether the resource was located in a load pocket.

11 **B. Legal Basis for the Claim the Information is Protected under ORCP 36(C)(7)**
12 **(OAR 860-001-0080(3)(a)(B)).**

13 ORCP 36(C)(7) provides protection against unrestricted discovery of “trade secrets or
14 other confidential research, development, or commercial information.” The information that
15 will be provided constitutes “trade secret” information protected under ORCP 36(C)(7) and
16 Oregon’s Public Records Laws. Oregon’s Uniform Trade Secrets Act, ORS 646.461 to
17 646.475, defines a “trade secret” as information, including cost data, that: (a) derives
18 independent economic value, actual or potential, from not being generally known to the
19 public or to other person who can obtain economic value from its disclosure or use; and (b) is
20 the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The
21 Oregon Public Records Law, ORS 192.410 to 192.505, exempts from disclosure public
22 records that are “trade secrets” that:

23 [M]ay include but are not limited to, any formula, plan, pattern,
24 process, tool, mechanism, compound, procedure, production
25 data, or complication of information which in not patented,
26 which is known only to certain individuals within an
27 organization and which is used in a business it conducts,

1 having actual or potential commercial value, and which gives
2 its user an opportunity to obtain a business advantage over
3 competitors who do not know or use it.⁴

4 The information that PacifiCorp has been ordered to produce is non-public
5 information that is highly commercially sensitive. Public disclosure of the information
6 would undermine the competitive nature of the RFP process and would have a chilling effect
7 on future RFPs as bidders would not be assured that the confidential bids would remain
8 protected from discovery by potential competitors. This would harm PacifiCorp’s ability to
9 receive complete and competitive bids in future renewable resource acquisitions. This harm
10 would ultimately flow through to customers in the form of higher resource acquisition costs.

11 **C. Exact Nature of the Relief Requested (OAR 860-001-0080(3)(a)(C)).**

12 The Company requests that the Commission enter the proposed Modified Protective
13 Order that is attached to this Motion as Attachment A. The terms of the Modified Protective
14 Order are narrowly tailored and intended to apply to only the Company’s most sensitive
15 information. The proposed Modified Protective Order will allow the transmission of Highly
16 Protected Information to all of the parties that sign the Modified Protective Order. By
17 identifying specific individuals that are qualified to access Highly Protected Information, the
18 parties to the Modified Protective Order will have certainty regarding the permissible
19 disclosure of Highly Protected Information.

20 **D. Specific Reasons the Relief Requested is Necessary**
21 **(OAR 860-001-0080(3)(a)(D)).**

22 Entry of a Modified Protective Order with additional protections will allow the
23 Company to make the information available to the parties in a manner consistent with the
24 fact that it is highly sensitive commercial information. Granting the requested additional

⁴ ORS 192.501(2).

1 protection also will significantly limit the risk of an inadvertent breach of confidentiality,
2 which could adversely affect PacifiCorp and its customers.

3 The standard protective order is insufficient because it does not provide adequate
4 safeguards against the disclosure of highly confidential information.

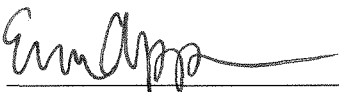
5 **E. Description of the Intermediate Measures Explored by the Parties**
6 **(OAR 860-001-0080(3)(a)(E)).**

7 As discussed above, PacifiCorp has been ordered to disclose certain information
8 related to its 2016 renewable resource RFP bids. Selected redaction of data will not be
9 sufficient or conducive to allow parties to review the requested information. As stated above,
10 in the October 27 ruling partially granting REC's motion to compel discovery, ALJ
11 Kirkpatrick stated that PacifiCorp may first submit a request for a modified protective order
12 before disclosing this information.

13 **IV. CONCLUSION**

14 For these reasons, PacifiCorp respectfully requests that the Commission issue a
15 Modified Protective Order in the format provided as Attachment A to this Motion for the
16 purposes of PacifiCorp's responses to discovery without unnecessary risk of to the Company
17 and its customers.

Respectfully submitted this 1st day of November 2016.

By: 
Erin Apperson
Legal Counsel
PacifiCorp d/b/a Pacific Power

ATTACHMENT A

PROPOSED MODIFIED PROTECTIVE ORDER

MODIFIED PROTECTIVE ORDER

DOCKET NO. UM 1610

Scope of this Order:

1. This order governs the acquisition and use of "Protected Information" and "Highly Protected Information" produced or used by any party to these proceedings.

Designation of "Protected Information" and "Highly Protected Information":

2. Any party may designate as Protected Information any information the party reasonably determines:
 - (a) Falls within the scope of ORCP 36(C)(7) (a trade secret or other confidential research, development, or commercial information); and
 - (b) Is not publicly available.
3. Any party may designate as Highly Protected Information any information that the party reasonably determines:
 - (a) Satisfies paragraph 2; and
 - (b) Is not adequately protected by the general protective order.
4. To designate information as Protected Information, a party must place the following legend on the material:

PROTECTED INFORMATION SUBJECT TO
GENERAL PROTECTIVE ORDER NO. 12-461
The party should make reasonable efforts to designate as Protected
Information only the portions of the information covered by
ORCP 36(C)(7).

5. To designate information as Highly Protected Information, a party must place the following legend on the material:

HIGHLY PROTECTED INFORMATION
SUBJECT TO MODIFIED PROTECTIVE ORDER NO. ____

- The party should make reasonable efforts to designate Highly Protected Information only the portions of the information that satisfies paragraph 3 of this Modified Protective Order.
6. Each page of a document containing Protected Information filed with the Commission and served on Qualified Persons under this order must comply with the requirements of Order No. 12-461.
 7. Protected Information disclosed by a designating party to a Qualified Person through informal discovery or by means of the Commission's Huddle website will be marked

"Protected Information" and uploaded to a file folder designated "protected" in Huddle, if applicable.

8. Each page of a document containing Highly Protected Information filed with the Commission and served on persons qualified to access Highly Protected Information under this order must be printed on green paper and placed in a sealed envelope or other appropriate container. Only the portions of a document that fall within ORCP 36(C)(7) may be placed in the envelope/container. The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. ____
AND CONTAINS HIGHLY PROTECTED INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO PERSONS
QUALIFIED TO ACCESS HIGHLY PROTECTED INFORMATION
AS DEFINED IN THE ORDER.

9. Highly Protected Information disclosed by a designating party to a person qualified to access Highly Protected information through informal discovery or by means of the Commission's Huddle website will be marked "Highly Protected Information" and uploaded to a file folder designated "highly protected" in Huddle, if applicable.
10. A party may designate as Protected Information or Highly Protected Information any information previously provided by giving written notice to the Commission and other parties. Parties in possession of newly designated Protected Information or Highly Protected Information must make reasonable efforts to ensure that all copies of the material containing the information bear the above legend if requested by the designating party.
11. A designating party must make reasonable efforts to ensure that information designated as Protected Information or Highly Protected Information continues to warrant protection under this order. If designated information becomes publically available or no longer falls within the scope of ORCP 36(C)(7), the designating party should make reasonable efforts to remove the protected designation and provide written notice to the Commission and other parties.

Challenge to Designation of Information as Protected or Highly Protected:

12. A party may informally challenge any designation of Protected Information or Highly Protected Information by notifying the designating party. Once notified, the designating party bears the burden of showing that the challenged information is covered by ORCP 36(C)(7). If a party challenges the "Highly Protected Information" designation, the designating party bears the burden of showing that the "Highly Protected Information" designation is necessary. Any party may request that the ALJ hold a conference to help resolve disputes about proper designation.
13. If the dispute cannot be resolved informally, the challenging party may file a written objection with the ALJ. The objection need only identify the information in dispute and certify that reasonable efforts to achieve informal resolution have failed.

14. Within five business days of service of the objection, the designating party must either remove the challenged protected designation or file a written response. A written response must identify the factual and legal basis of how the challenged information is protected under the Oregon Public Records Act, ORS 192.410 et seq, or the Uniform Trade Secrets Act, ORS 646.461(4). Broad allegations unsubstantiated by specific facts are not sufficient. If the designating party does not timely respond to the objection, the Commission will remove the protected designation from the challenged information.
15. The challenging party may file a written reply to any response within five business days of service of an objection. The designating party may file a sur-reply within three business days of service of a response. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of service of the last filing.

Access to Protected Information and Highly Protected Information:

16. Only Qualified Persons may access Protected Information designated by another party under this Modified Protective Order. Persons automatically bound by this protective order and qualified to access Protected Information are:
 - (a) Commission employees; and
 - (b) Assistant Attorneys General assigned to represent the Commission.
17. Persons qualified upon a party signing the Consent to be Bound section of Appendix B are:
 - (a) Counsel for the party;
 - (b) Any person employed directly by counsel of record; and
 - (c) An employee of the Regulatory Division at the Citizens' Utility Board of Oregon.

A party must identify all these persons in section 2 of Appendix B when consenting to be bound by the order, and must update this list throughout the proceeding to ensure it accurately identifies Qualified Persons.

18. A party bound by the protective order may seek to qualify other persons to access Protected Information by having those persons complete and sign Appendix C, and submitting that information to the Commission and all parties. Within five business days of receiving a copy of Appendix C, the designating party must either provide the requested access to Protected Information or file an objection under paragraph 22.
19. Only Qualified Persons, as defined in paragraph 16, are automatically bound by this Modified Protective Order and qualified to access Highly Protected Information.
20. Persons qualified to access Highly Protected Information upon signing the Signatory Page for Highly Protected Information, Appendix D, are:

- (a) An employee or counsel of the Regulatory Division at the Citizens' Utility Board; and
- (b) Counsel for a party.

Objection to Access to Protected Information:

- 21. All persons qualified to have access to Highly Protected Information will have access to Highly Protected Information unless the designating party objects as provided in this paragraph. As soon as the designating party becomes aware of reasons to restrict access to a Qualified Person, the designating party must provide the Qualified Person and his or her counsel notice stating the basis for the objection. The parties must promptly confer and attempt to resolve the dispute on an informal basis.
- 22. If the parties are unable to resolve the matter informally, the designating party must file a written objection with the ALJ. The requesting party may file a response to the motion within 5 business days of service of an objection. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of the last filing. Pending the ALJ's decision, the specific Protected Information or Highly Protected Information may not be disclosed to the person subject to the objection.

Use of Protected Information:

- 23. All Qualified Persons must take reasonable precautions to keep Protected Information and, if applicable, Highly Protected Information, secure. Qualified Persons may reproduce Protected Information or Highly Protected Information only to the extent necessary to participate in these proceedings. A Qualified Person may discuss Protected Information or Highly Protected Information obtained under this order only with other Qualified Persons who have obtained the same information.
- 24. Without the written permission of the designating party, any person given access to Protected Information or Highly Protected Information under this order may not disclose Protected Information for any purpose other than participating in these proceedings.
- 25. Nothing in this protective order precludes any party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this protective order.
- 26. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Protected Information and Highly Protected Information to the extent reasonably necessary to maintain a file of these proceedings or to comply with requirements imposed by another governmental agency or court order. Any other person retaining Protected Information must destroy or return it to the designating party within 90 days after final resolution of these proceedings unless the designating party consents in writing to retention of the Protected Information. This paragraph does not apply to the Commission or its Staff.

Duration of Protection:

27. The Commission will preserve the designation of information as Protected Information or Highly Protected Information for a period of five years from the date of the final order in these proceedings, unless extended by the Commission at the request of the designating party. The Commission will notify the designating party at least two weeks prior to the release of Protected Information or Highly Protected Information.

CONSENT TO BE BOUND
DOCKET NO. UM 1610

I. Consent to be Bound:

This modified protective order governs the use of Protected Information and Highly Protected Information in this proceeding.

_____ (Party) agrees to be bound by the terms of the modified protective order and certifies that it has an interest in these proceedings that is not adequately represented by other parties to the proceedings.

Signature: _____

Printed Name: _____

Date: _____

II. Persons Qualified under Paragraph 17:

_____ (Party) identifies the following person(s) qualified under paragraph 17.

PRINTED NAME	DATE

QUALIFICATION OF OTHER PERSONS
DOCKET NO. UM 1610

III. Persons Seeking Qualification under Paragraph 18:

I have read the modified protective order, agree to be bound by the terms of the order, and provide the following information.

Signature:		Date:
Printed Name:		
Physical Address:		
Email Address:		
Employer:		
Associated Party:		
Job Title:		
If Not employee of party, description of practice and clients:		

Signatory Page for Highly Protected Information
DOCKET NO. UM 1610

I. Consent to be Bound

This Modified Protective Order governs the use of "Highly Confidential Information" in this proceeding.

_____ (Party) agrees to be bound by its terms of this Modified Protective Order.

Signature: _____

Printed: _____

Date: _____

II. Persons Qualified pursuant to Paragraph 20: Highly Protected Information:

I have read the Modified Protective Order and agree to be bound by the terms of the order.

I certify that:

I understand that ORS 756.990(2) allows the Commission to impose monetary sanctions if a party subject to the jurisdiction of the Commission violates an order of the Commission.

The party I am associated with has a legitimate and non-competitive need for the Highly Confidential Information for this proceeding and not simply a general interest in the information.

By: Signature: _____ Date: _____

Printed Name: _____

Address: _____

Employer: _____

Job Title: _____

By: Signature: _____ Date: _____

Printed Name: _____

Address: _____

Employer: _____

Job Title: _____

By: Signature: _____ Date: _____

Printed Name: _____

Address: _____

Employer: _____

Job Title: _____