

January 16, 2018

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

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

Attn: Filing Center

RE: UI ___ —PacifiCorp's Application Requesting Approval of an Affiliate Interest Transaction with BNSF Railway Company

PacifiCorp d/b/a Pacific Power encloses for filing its Application Requesting Approval of an Affiliate Interest Transaction with BNSF Railway Company.

Also included are Motions for a General Protective Order and Modified Protective Order.

PacifiCorp respectfully requests that all information requests regarding this matter be addressed to:

By E-Mail (preferred): datarequest@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah Street, Suite 2000
Portland, Oregon, 97232

Please contact me with any informal inquiries with respect to this filing at (503) 813-6583.

Sincerely,



Natasha Siores
Manager, Regulatory Affairs

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI _____

In the Matter of

PACIFICORP d/b/a PACIFIC POWER

Application for Approval of an Affiliated
Transaction.

APPLICATION OF PACIFICORP

Under ORS 757.495 and in accordance with OAR 860-027-0040, PacifiCorp d/b/a Pacific Power seeks approval from the Public Utility Commission of Oregon (Commission) of an affiliated transaction whereunder PacifiCorp contracts with its affiliate Burlington Northern Santa Fe Railway Company (BNSF) for coal transportation services from BNSF-served mines in New Mexico to the Cholla Generating Station near Joseph City, Arizona. PacifiCorp seeks approval of the contracted services as an affiliated interest transaction.

PacifiCorp provides a copy of the BNSF Railway Common Carrier Pricing Authority 90068 Attachment A Coal Unit Train Commitment Certificate Number BNSF 90068-0080 (Rail Agreement) as Attachment A. PacifiCorp is required under the Rail Agreement to maintain the confidentiality of the entire agreement. Attachment A contains Highly Protected Information. A redacted version of Attachment A is provided as confidential in accordance with OAR 860-001-0070. PacifiCorp has included Motions for a Protective Order and a Modified Protective Order concurrent with this application. The Rail Agreement contains terms and conditions resulting from negotiations between the parties, the disclosure of which could erode PacifiCorp's bargaining power in the future.

I. BACKGROUND

PacifiCorp is a wholly-owned indirect subsidiary of Berkshire Hathaway Energy Company (BHE). BHE is a subsidiary of Berkshire Hathaway, Inc. (Berkshire Hathaway).

BNSF is also a subsidiary of Berkshire Hathaway. “Affiliated interest,” as defined in ORS 757.015(3), includes every corporation five percent or more of whose voting securities are owned by any corporation or person owning five percent of the voting securities of a public utility or in any successive chain of ownership of a public utility. Berkshire Hathaway’s ownership interest in PacifiCorp through BHE, and ownership interest in BNSF, qualifies BNSF as an affiliated interest of PacifiCorp.

With this Application, PacifiCorp requests Commission authorization to continue to engage in business transactions with BNSF as described herein.

II. COMPLIANCE WITH OAR 860-027-0040 FILING REQUIREMENTS

A. Name and Address

PacifiCorp’s exact name and address of its principal business office are:

PacifiCorp
825 NE Multnomah Street
Portland, OR 97232

B. Communications and Notices

All notices and communications with respect to this Application should be addressed to:

Jeffery B. Erb
Chief Corporate Counsel
PacifiCorp
825 NE Multnomah Street, Suite 1800
Portland, OR 97232
Telephone: 503.813.5029
Email: jeff.erb@pacificorp.com

PacifiCorp Oregon Dockets
825 NE Multnomah Street, Suite 2000
Portland, OR 97232
Email: OregonDockets@pacificorp.com

Additionally, PacifiCorp respectfully requests that all information requests regarding this matter be addressed to:

By e-mail (**preferred**) datarequest@pacificorp.com

By regular mail Data Request Response Center

PacifiCorp
825 NE Multnomah St., Suite 2000
Portland, OR 97232

Informal inquires may also be directed to Natasha Siores at (503) 813-6583.

C. Relationship Between PacifiCorp and Affiliated Interest

PacifiCorp is a wholly-owned, indirect subsidiary of BHE. BHE is a subsidiary of Berkshire Hathaway. BNSF is also a subsidiary of Berkshire Hathaway. Therefore, BNSF is an “affiliated interest” of PacifiCorp as set forth in ORS 757.015(3).

D. Voting Securities

PacifiCorp and BNSF do not own voting securities in each other.

E. Common Officers and Directors

PacifiCorp and BNSF do not share any officers or directors.

F. Pecuniary Interest

No officer or director of PacifiCorp, Arizona Public Service Company (APS), or BNSF is a party to, or has a pecuniary interest in, the contemplated business transaction between PacifiCorp and BNSF.

G. Description of Goods and Services Provided, Cost(s) Incurred; Market Value; Pricing Methods

The previous coal transportation contract for the Cholla Generating Station expired on December 31, 2017. PacifiCorp provided notice of the previous rail agreement in docket UI 269, which the Commission approved in Order No. 07-323. The new Rail Agreement is a joint agreement between BNSF, APS, and PacifiCorp. APS is the operator of the Cholla plant and also has ownership interests in Cholla Unit 1, Unit 2 (retired 10/2015), and Unit 3. PacifiCorp owns Unit 4. The Cholla plant is reflected in Oregon rates. The coal-transport Rail Agreement is a two-year agreement for 2018 and 2019, with a unilateral extension

option for one additional year if triggered by either APS or PacifiCorp or both. The new Rail Agreement has been negotiated at arms-length. The base transportation rate is set forth in the Rail Agreement.

H. Estimate of Amount PacifiCorp will Pay or Collect Annually

PacifiCorp's share of the cost is currently estimated to be \$ [REDACTED] for the two-year Rail Agreement through December 31, 2019.

I. Reasons Relied Upon for Providing the Proposed Services, and Benefits to the Public

Entering into the new Rail Agreement is in the public interest because it allows for the continued efficient operation of Cholla Unit 4. Without the new Rail Agreement, PacifiCorp would not be able to obtain the coal needed to continue operating the plant at a reasonable cost. BNSF is the only entity that can provide the coal to the Cholla Generating Station via rail.

J. Description of the Procurement Process

See Section II.G above.

K. Relationship of Cost of Provision of Services and Market Value

As described above, BNSF provides services pursuant to the terms and conditions of the Rail Agreement.

L. Contract Between Affiliated Interest and PacifiCorp

See Attachment A for a copy of the Rail Agreement.

M. Copy of Board Resolutions

This transaction did not require approval from PacifiCorp's Board of Directors.

III. PRAYER FOR RELIEF

PacifiCorp respectfully requests a Commission order (1) finding that the Rail Agreement is consistent with the public interest; and (2) approving the Rail Agreement as an affiliated interest agreement.

Respectfully submitted this 16th day of January, 2018,

By:



Jeffery B. Erb, #95259
Chief Corporate Counsel
PacifiCorp

CONFIDENTIAL

ATTACHMENT A

Rail Agreement

**THIS ATTACHMENT IS CONFIDENTIAL IN
ITS ENTIRETY AND IS PROVIDED UNDER
SEPARATE COVER**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI _____

In the Matter of

PACIFICORP d/b/a PACIFIC POWER

Application for Approval of an Affiliated
Transaction.

PACIFICORP'S MOTION FOR
GENERAL PROTECTIVE ORDER

Under ORCP 36(C)(7) and OAR 860-001-0080(1), PacifiCorp d/b/a Pacific Power moves the Public Utility Commission of Oregon (Commission) for entry of a general protective order in this proceeding. Good cause exists to issue a protective order to protect commercially sensitive and confidential business information related to the rail transportation services contract at issue in this proceeding.

The Commission's rules authorize PacifiCorp to seek reasonable restrictions on discovery of trade secrets and other confidential business information.¹ The Commission's general protective order is designed to allow the broadest possible discovery consistent with the need to protect confidential information.² PacifiCorp expects to receive discovery requests in these proceedings, including commercially sensitive pricing information, confidential market analyses and business projections, or confidential information regarding contracts for the purchase or sale of electric power, power services, or fuel. PacifiCorp will

¹ See OAR 860-001-0000(1) (adopting the Oregon Rules of Civil Procedure); ORCP 36(C)(7) (providing protection against unrestricted discovery of "trade secrets or other confidential research, development, or commercial information"). See also *In re Investigation into the Cost of Providing Telecommunication Service*, Docket UM 351, Order No. 91-500 (1991) (recognizing that protective orders are a reasonable means to protect "the rights of a party to trade secrets and other confidential commercial information" and "to facilitate the communication of information between litigants").

² OAR 860-001-0080(2).

be exposed to competitive injury if it is forced to make unrestricted disclosure of its confidential business information.

It is also substantially likely that the parties to these proceedings will seek to discover further information held by PacifiCorp, including confidential business information. Issuance of a protective order will facilitate the production of relevant information and expedite the discovery process.

For these reasons, PacifiCorp respectfully requests that the Commission enter its general protective order in this docket.

Respectfully submitted this 16th day of January 2018.



Jeffery B. Erb
Chief Corporate Counsel
PacifiCorp

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI _____

In the Matter of
PACIFICORP, d/b/a PACIFIC POWER,
Application for Approval of an Affiliated
Transaction.

PACIFICORP'S MOTION FOR
MODIFIED PROTECTIVE ORDER

I. INTRODUCTION

Under OAR 860-001-0420 and OAR 860-001-0080(3), PacifiCorp d/b/a Pacific Power moves the Public Utility Commission of Oregon (Commission) for entry of a Modified Protective Order in this proceeding. Specifically, PacifiCorp requests the entry of the Modified Protective Order attached as Attachment A to this Motion.

II. BACKGROUND

Concurrent with the application in this proceeding, PacifiCorp filed a Motion for a General Protective Order. A Modified Protective Order would provide additional protection for highly commercially sensitive, non-public information related to the rail transportation services contract at issue in this proceeding.

III. REQUEST FOR ADDITIONAL PROTECTION

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

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

PacifiCorp anticipates that parties to this docket may request information regarding highly confidential terms of the contract at issue in this proceeding. The information for

which PacifiCorp seeks additional protection includes, but is not limited to, specific terms of the contract such as price, volumes, extension terms, and unloading parameters. Disclosure of these highly confidential terms would likely cause significant harm to PacifiCorp by compromising its negotiating power and ability to engage in business transactions competitively.

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

ORCP 36(C)(7) provides protection against unrestricted discovery of “trade secrets or other confidential research, development, or commercial information.” The information requested by Staff constitutes “trade secret” information protected under ORCP 36(C)(7) and Oregon’s Public Records Laws. Oregon’s Uniform Trade Secrets Act, ORS 646.461 to 646.475, defines a “trade secret” as information, including cost data, that: (a) derives independent economic value, actual or potential, from not being generally known to the public or to other person who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The Oregon Public Records Law, ORS 192.410 to 192.505, exempts from disclosure public records that are “trade secrets” that “may include but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or complication of information which in not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.”¹

¹ ORS 192.501(2).

The information for which PacifiCorp seeks additional protection is non-public information that is highly proprietary and commercially sensitive. Public disclosure of the information would harm PacifiCorp's competitive position in the negotiation of future coal transportation agreements because competitors would gain a competitive advantage through an understanding the terms of PacifiCorp's contracts. This harm would ultimately flow through to customers in the form of higher costs and less advantageous terms and conditions of future contracts.

Public disclosure of coal transportation agreements would also harm the competitive position of PacifiCorp's suppliers and may expose the company to claims from those suppliers for breach of contract.

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

PacifiCorp requests that the Commission enter the proposed Modified Protective Order that is attached to this Motion as Attachment A. The terms of the Modified Protective Order are narrowly tailored and intended to apply to only the Company's most sensitive information. The proposed Modified Protective Order will allow the transmission of Highly Protected Information to all of the parties that sign on to the Modified Protective Order and recognizes that there is certain Highly Protected Information that intervenors will only share with their attorneys, with the exception of non-attorneys at Staff and CUB. By identifying specific individuals that are qualified to access Highly Protected Information, the parties to the Modified Protective Order will have certainty regarding the permissible disclosure of Highly Protected Information.

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

Entry of a Modified Protective Order with additional protections will allow PacifiCorp to make the information available to the parties in a manner consistent with the fact that it is highly sensitive commercial information. Granting the requested additional protection also will significantly limit the risk of an inadvertent breach of confidentiality, which could adversely affect PacifiCorp, its coal transporters, and its customers.

The General Protective Order is insufficient because it does not provide adequate safeguards against the disclosure of highly confidential information. Reliance on the General Protective Order also would delay discovery and interfere with the expeditious handling of this case.

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

Additional protections, such as those contained in the proposed Modified Protective Order, are appropriate when the consequences of disclosure would be particularly severe. The Modified Protective Order also restricts the manner and means by which highly confidential information may be maintained, stored, and transmitted, thus minimizing the risk of inadvertent disclosure. Such protections and restrictions are prudent for the highly commercially sensitive, non-public information related to the rail transportation services contract at issue in this proceeding.

IV. CONCLUSION

For these reasons, PacifiCorp respectfully requests that the Commission issue a Modified Protective Order in the format provided as Attachment A to this Motion to allow PacifiCorp to provide parties highly confidential information as requested during the proceeding without unnecessary risk to the company, its suppliers and affiliated interests.

Respectfully submitted this 16th day of January, 2018.

By:



Jeffery B. Erb
Chief Corporate Counsel
PacifiCorp d/b/a Pacific Power

ATTACHMENT A

PROPOSED MODIFIED PROTECTIVE ORDER

MODIFIED PROTECTIVE ORDER

UI _____

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. 18-_____

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. 18-_____

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 General Protected Order.
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 Oregon Citizens' Utility Board.

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 Oregon 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

UI _____

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

UI _____

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

UI _____

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: _____