

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 **UM 1845**

4 In the Matter of

5 PACIFICORP, dba PACIFIC POWER,  
6 PacifiCorp's Application for Approval of  
7 2017 Request for Proposals.

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STAFF RESPONSE IN SUPPORT OF NIPPC'S  
MOTION FOR RECONSIDERATION OF  
MODIFIED PROTECTIVE ORDER

10 Staff of the Public Utility Commission of Oregon (Staff) submits the following points in  
11 support of Northwest and Intermountain Power Producers' (NIPPC's) filing in this docket on  
12 February 22, 2018, which is treated as a Motion for Reconsideration of the Modified Protective  
13 Order, per the Administrative Law Judge's ruling on February 23, 2018.

14 A party may request a modified protective order under OAR 860-001-0080(3) to provide  
15 additional protection beyond those provided in the general protective order for Highly Protected  
16 Information. The motion must include the exact nature of the information involved, legal basis  
17 for the claim that the information is protected, the relief requested, specific reasons why the  
18 requested relief is necessary; and a detailed description of the intermediate measures explored by  
19 the parties and why they are insufficient.

20 The Modified Protective Order was issued within a few days of PacifiCorp's February  
21 16, 2018 request, without opportunity for objection, to facilitate a comment schedule that  
22 required comments on the Independent Evaluator's Final Report to be filed by March 2.<sup>1</sup>  
23 However, the order notes that requests for reconsideration would be accepted. And, on February  
24 23, 2018, the Administrative Law Judge that confirmed NIPPC's filing would be treated as a  
25 request for reconsideration.

26 <sup>1</sup> In the Matter of PacifiCorp's Application for Approval of 2017 Request for Proposals, Docket  
UM 1845, Order No. 18-057 at 2 (February 20, 2018).

1 At the request of PacifiCorp, the Modified Protective Order authorizes access to Highly  
2 Protected Information only for Staff, an employee or counsel of the regulatory division of the  
3 Oregon Citizens Utility Board (CUB) and “persons that are not involved in PacifiCorp’s ongoing  
4 solicitation processes as bidders, including persons who represent or advise bidders, or persons  
5 that reasonably expect to be involved in solicitations or negotiations of power purchase  
6 agreements within the next two years.” Further the Modified Protective Order limits access to  
7 Highly Protected Information by any qualified person, other than Staff or CUB, to PacifiCorp’s  
8 offices.

9 PacifiCorp alleges that limiting access by qualified persons to its offices makes public  
10 disclosure less likely. Information to be subject to higher protection includes “bid information,  
11 analysis and modeling that relies on bid information, and reports provided by independent  
12 evaluators that rely on and refer to bid information.”<sup>2</sup> Given the existing protections against  
13 unauthorized disclosure, this restriction is unnecessary. Limiting access will limit the ability of  
14 any stakeholder other than Staff and CUB to effectively participate in the acknowledgement  
15 proceeding. The information that would be subject to supervised viewing goes to the essence of  
16 any review of PacifiCorp’s shortlist selection, which is on an expedited schedule. Restricting  
17 access in this manner does not add protection sufficient to outweigh the benefit of full review by  
18 qualified persons.

19 Restricting access to exclude “persons who represent or advise bidders, or persons that  
20 reasonably expect to be involved in solicitations or negotiations of power purchase agreements  
21 within the next two years” is overly broad and will prevent parties that have a legitimate, non-  
22 competitive interest in this proceeding from fully participating. PacifiCorp alleges the restriction  
23 is necessary to ensure bidders do not obtain an unfair competitive advantage by relying on  
24 another bidder’s information. PacifiCorp’s request is similar to the Company’s Motion for a  
25 Modified Protective Order filed on January 16, 2018 in Docket No. UI 393. However, that

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<sup>2</sup> PacifiCorp’s Motion for Modified Protective Order at 1 (February 16, 2018).

1 motion did not exclude access by counsel for parties to the general protective order. Excluding  
2 legal counsel is unprecedented and unnecessary to protect commercially-sensitive information or  
3 trade secrets from use outside the proceeding.<sup>3</sup> PacifiCorp has not presented evidence that any  
4 counsel representing parties in this docket cannot be expected to keep commitments reflected in  
5 signed protective orders. Staff finds that absent such a showing, it should be the expectation of  
6 the Commission that all counsel that have signed protective orders will act consistent with the  
7 rules of professional conduct and will not disclose any information protected by Commission  
8 order. Presuming that counsel cannot be expected to keep this commitment would equate to a  
9 major departure in the Commission's understanding and use of protective orders. The existing  
10 protections restrict use of the information outside this proceeding and the consequences would be  
11 severe for any attorney making an unauthorized disclosure.

12 CONCLUSION

13 Based on the foregoing, Staff supports NIPPC's motion for reconsideration and requests  
14 that the relief requested therein be granted.

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16 DATED this 28<sup>th</sup> day of February 2018.

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Respectfully submitted,

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ELLEN F. ROSENBLUM  
Attorney General

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Commission of Oregon

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<sup>3</sup> See, e.g., *In the Matter of Northwest Natural, Investigation into Long-Term Hedging Strategy*,  
Docket UM 1720, Order No 16-057 (February 18, 2016).