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June 24, 2016

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-1166

Attn: Filing Center

RE: UE 307—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,

A handwritten signature in black ink that reads "R. Bryce Dalley" followed by a stylized flourish.

R. Bryce Dalley
Vice President, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 307

In the Matter of
PACIFICORP, dba PACIFIC POWER,
2017 Transition Adjustment Mechanism.

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 (PacifiCorp or Company) moves the Public Utility Commission of Oregon (Commission) for entry of a Modified Protective Order in this proceeding.¹ Specifically, PacifiCorp requests the Administrative Law Judge issue the Modified Protective Order attached as Attachment A to this Motion. A Modified Protective Order would provide additional protection for highly commercially sensitive, non-public information related to PacifiCorp's coal supply agreements, and the documents and records of affiliated coal mining companies.

Staff served the discovery seeking information for which PacifiCorp now seeks additional protection. The Company has conferred with Staff regarding production of this information under the Company's proposed Modified Protective Order and Staff raised no objection.

II. BACKGROUND

PacifiCorp's annual Transition Adjustment Mechanism (TAM) filing updates net power costs for the upcoming year and sets the transition adjustment for Oregon customers

¹ PacifiCorp is not seeking to modify Protective Order No. 16-128 on a permanent basis, but only in the current proceeding to respond to the specific data requests from the Staff of the Public Utility Commission of Oregon.

1 who choose direct access in the November open enrollment window. The TAM Guidelines
2 include a commitment to make any protective order an ongoing protective order that will
3 continue to be effective in future TAM proceedings.² In this case, the Commission issued an
4 updated general protective order on March 28, 2016, reflecting changes to the general
5 protective order in Order No. 15-243.³

6 Following the entry of the general protective order, Staff requested access to all of the
7 Company's coal supply and transportation agreements, including agreements between
8 PacifiCorp and its affiliate, the Bridger Coal Company, and the Bridger Coal Company's
9 general ledger. After consultation between counsel, Staff agreed to review the coal supply
10 agreements at PacifiCorp's offices, similar to arrangements between the parties in prior
11 proceedings.

12 Following that review, Staff has now requested that the Company provide summaries
13 of certain terms and conditions of the coal supply and transportation agreements related all its
14 plants, including the Hunter, Huntington, and Jim Bridger plants. Staff has also requested
15 copies of the Bridger Coal Company general ledger. While the Company does not believe all
16 of the information requested is relevant to the proceeding, the Company is willing to produce
17 the information with additional safeguards to protect the highly confidential nature of the
18 material.

² *PacifiCorp 2010 Transition Adjustment Mechanism*, Docket No. UE 207, Order No. 09-274, TAM Guidelines at A.7 (July 16, 2009).

³ *Re PacifiCorp, dba Pacific Power, 2017 Transition Adjustment Mechanism*, Docket UE 307, Order No. 16-128 (March 28, 2016).

1 **III. REQUEST FOR ADDITIONAL PROTECTION**

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

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

6 Staff has requested the following information for each of the Company’s coal supply
7 agreements:

- 8 a. Supplier
- 9 b. Plant
- 10 c. Contract term
- 11 d. Contract minimums
- 12 e. Contract maximums
- 13 f. Charge or penalty for buyer responsible contract shortfall
- 14 g. Each clause that allows PacifiCorp to avoid shortfall charges
- 15 h. Termination penalty
- 16 i. Each clause that allows PacifiCorp to avoid termination penalties
- 17 j. Allow for modifications related to Environmental legislation.⁴

18 Staff also requested the following information for each of the Company’s coal
19 transportation agreements:

- 20 a. Transporter
- 21 b. Plant
- 22 c. Contract term
- 23 d. Contract minimums
- 24 e. Contract maximums
- 25 f. Charge or penalty for buyer responsible contract shortfall
- 26 g. Each clause that allows PacifiCorp to avoid shortfall charges
- 27 h. Termination penalty
- 28 i. Each clause that allows PacifiCorp to avoid termination penalties
- 29 j. Allow for modifications related to Environmental legislation.⁵

⁴ Staff Data Request 67.

⁵ Staff Data Request 68.

1 In addition, Staff requested copies of the coal supply agreements for the Hunter,
2 Huntington, and Jim Bridger plants, as well as the coal transportation agreements for the Jim
3 Bridger plant, that were previously reviewed at PacifiCorp's offices.

4 Staff further requested access to all of the Bridger Coal Company agreements,
5 including the Third Restated and amended Coal Sales Agreement, Fortieth Amendment to
6 the Third Restated and Amended Coal Sales Agreement, the Joint Venture Agreement, the
7 reclamation Fund Agreement, and the Reclamation Trust Agreement. Additionally, Staff
8 requested that the Company provide the general ledger and detailed trial balance for Bridger
9 Coal Company for 2013, 2014, and 2015.

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

12 ORCP 36(C)(7) provides protection against unrestricted discovery of "trade secrets or
13 other confidential research, development, or commercial information." The information
14 requested by Staff constitutes "trade secret" information protected under ORCP 36(C)(7) and
15 Oregon's Public Records Laws. Oregon's Uniform Trade Secrets Act, ORS 646.461 to
16 646.475, defines a "trade secret" as information, including cost data, that: (a) derives
17 independent economic value, actual or potential, from not being generally known to the
18 public or to other person who can obtain economic value from its disclosure or use; and (b) is
19 the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The
20 Oregon Public Records Law, ORS 192.410 to 192.505, exempts from disclosure public
21 records that are "trade secrets" that "may include but are not limited to, any formula, plan,
22 pattern, process, tool, mechanism, compound, procedure, production data, or complication of
23 information which in not patented, which is known only to certain individuals within an
24 organization and which is used in a business it conducts, having actual or potential

1 commercial value, and which gives its user an opportunity to obtain a business advantage
2 over competitors who do not know or use it.⁶

3 The information requested by Staff is non-public information that is highly
4 proprietary and commercially sensitive. This is true for both the Company's third-party
5 contracts and contracts between the Company and Bridger Coal Company. Public disclosure
6 of the information would harm the Company's competitive position in the negotiation of
7 future coal supply and coal transportation agreements because competitors would gain a
8 competitive advantage through an understanding of PacifiCorp's long-term fuel plans and the
9 terms of its contracts. This harm would ultimately flow through to customers in the form of
10 higher costs and less advantageous terms and conditions of future contracts.

11 Public disclosure of coal supply and transportation agreements would also harm the
12 competitive position of the Company's suppliers and may expose the Company to claims
13 from those suppliers for breach of contract. The information requested is specific to issues in
14 the current proceeding and may not be requested by parties in subsequent proceedings.

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

16 The Company requests that the Commission enter the proposed Modified Protective
17 Order that is attached to this Motion as Attachment A. The terms of the Modified Protective
18 Order are narrowly tailored and intended to apply to only the Company's most sensitive
19 information. The proposed Modified Protective Order will allow the transmission of Highly
20 Protected Information to all of the parties that sign on to the Modified Protective Order and
21 recognizes that there is certain Highly Protected Information that intervenors will only share
22 with their attorneys, with the exception of non-attorneys at Staff and CUB. Unlike other
23 parties to this case, Staff and CUB do not have any potential commercial or competitive

⁶ ORS 192.501(2).

1 interest in the highly confidential information. By identifying specific individuals that are
2 qualified to access Highly Protected Information, the parties to the Modified Protective Order
3 will have certainty regarding the permissible disclosure of Highly Protected Information.

4 **D. Specific Reasons the Relief Requested is Necessary (OAR 860-001-**
5 **0080(3)(a)(D)).**

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

12 The standard protective order is insufficient because it does not provide adequate
13 safeguards against the disclosure of highly confidential information. Reliance on the
14 Standard Protective Order also would delay discovery and interfere with the expeditious
15 handling of this case.

16 **E. Description of the Intermediate Measures Explored by the Parties (OAR 860-**
17 **001-0080(3)(a)(E)).**

18 As discussed above, Staff and the Company worked cooperatively to allow Staff's
19 review of the requested information at PacifiCorp's offices to protect the information from
20 public disclosure. Staff has now indicated, however, that the intermediate measures
21 previously used are insufficient and requests copies of documents containing highly
22 confidential information.


23 **IV. CONCLUSION**

24 For these reasons, PacifiCorp respectfully requests that the Commission issue a
25 Modified Protective Order in the format provided as Attachment A to this Motion for the

- 1 purposes of docket UE 307, to allow PacifiCorp to provide Staff the requested information
- 2 without unnecessary risk of to the Company, its suppliers and affiliated joint ventures.

Respectfully submitted this 24th day of June 2016.

By:



Matthew D. McVee
Assistant General Counsel
PacifiCorp d/b/a Pacific Power

ATTACHMENT A

PROPOSED MODIFIED PROTECTIVE ORDER

MODIFIED PROTECTIVE ORDER

DOCKET NO. UE 307

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. 16-128

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. 16-____

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. 16-128.
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. UE 307

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. UE 307

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. UE 307

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: _____