

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1360

In the Matter of)	
)	
PACIFICORP, dba Pacific Power)	MODIFIED
)	PROTECTIVE
Request for Approval of Draft 2008)	ORDER
Request for Proposal.)	
)	

**DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER
CONDITIONALLY GRANTED**

On December 19, 2008, PacifiCorp, dba Pacific Power (Pacific Power) filed a Motion for Additional Protection (Motion) with the Public Utility Commission of Oregon (Commission). Pacific Power states that good cause exists for the issuance of a Modified Protective Order (MPO) to protect information the Company considers highly commercially sensitive.

Pacific Power explains that after the Commission approved, in Order No. 08-310, the Company’s 2008 Request for Proposal (2008 RFP), the Company issued the 2008 RFP to the market, on October 2, 2008, with bid responses due by December 16, 2008. Pacific Power, with assistance from the Oregon Independent Evaluators (IEs) and Commission Staff, is currently evaluating the bids. In connection with this effort, the IEs have, and will continue to, issue highly confidential reports to Commission Staff.

Pacific Power asserts that, “in order to maintain the competitive integrity of the 2008 RFP and the bid evaluation process, the highly sensitive non-public information” related to the benchmarks, bids or the bid evaluation process “should be disclosed in Oregon only to the Commissioners, the Staff, the IEs and non-bidding parties who execute a modified protective order.¹ Pacific Power observes that the Commission already acknowledged, in Order No. 06-446, that any bidding information should be so limited. Pacific Power seeks the issuance of a MPO with specifically restrictive language that identifies “Non-Public Information” and limits review of such information to “qualified persons.”

¹ Motion, p. 2.

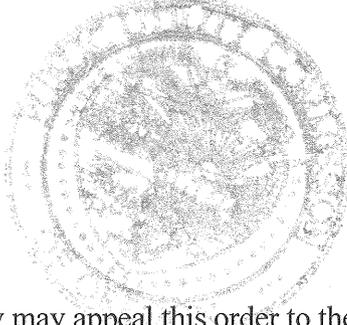
Pursuant to OAR 860-012-0035(1)(k), I find that good cause exists to issue the MPO, attached as Appendix A. Pacific Power's Motion is conditionally granted, subject to the timely filings of objections.

ORDER

IT IS ORDERED that the Modified Protective Order, attached as Appendix A, shall govern the disclosure of confidential information in this case.

Made, entered, and effective on

December 29, 2008



Traci A. G. Kirkpatrick

Traci A. G. Kirkpatrick
Administrative Law Judge

A party may appeal this order to the Commission pursuant to OAR 860-014-0091.

MODIFIED PROTECTIVE ORDER

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Scope of this Order-

1. This order governs the acquisition and use of “Confidential Information” in this proceeding.

Definitions-

2. “Non-Public Information” is information that falls within the scope of ORCP 36(c)(7) (“a trade secret or other confidential research, development, or commercial information”), and includes bidding information, as well as detailed scoring and evaluation results, as discussed in Guidelines 11 and 12 of Order No. 06-446.

3. A “qualified person” is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. A Commissioner or Commission Staff;
- c. A person qualified pursuant to paragraph 10, who is a non-bidding party. This includes parties and their employees.

Designation of Confidential Information-

4. Pacific Power may designate information as Non-Public Information by placing the following legend on the information:

NON-PUBLIC INFORMATION
SUBJECT TO MODIFIED PROTECTIVE ORDER

5. A party may designate as confidential any information previously provided by giving written notice to the other parties. Parties in possession of newly designated Confidential Information shall, when feasible, ensure that all copies of the information bear the above legend to the extent requested by the party desiring confidentiality.

Information Given to the Commission-

6. Non-Public information that is filed with the Commission or Commission Staff must be: (a) printed on green paper; (b) separately bound; and (c) placed in a sealed envelope or other appropriate container with the following legend on the envelope or other container.

SEALED PURSUANT TO ORDER NO. _____ AND
CONTAINS NON-PUBLIC INFORMATION. THE NON-
PUBLIC INFORMATION MAY BE SHOWN ONLY TO
QUALIFIED PERSONS, AS DEFINED IN ORDER NO.
_____.

7. The Commission's Administrative Hearings Division shall store the Non-Public Information in a locked cabinet dedicated to the storage of confidential information.

Disclosure of Confidential Information-

8. Parties desiring receipt of Non-Public Information shall sign the Consent to be Bound Form, attached as Appendix B. This requirement does not apply to the Commission Staff. Non-Public Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 3. When feasible, Non-Public Information shall be delivered to counsel. In the alternative, Non-Public Information may be made available for inspection and review by qualified persons in a place and time agreeable to the parties or as directed by the Administrative Law Judge.

9. To preserve the ability to protect Non-Public Information, no party shall share Confidential Information with qualified person(s) associated with another party or with Commission Staff except as expressly allowed by the party desiring confidentiality or by order of the presiding officer.

10. To become a qualified person under paragraph 3(c), a person must:

- a. Read a copy of this Modified Protective Order;
- b. Execute a statement acknowledging that the order has been read and agreeing to be bound by the terms of the order;
- c. Date the statement;
- d. Provide a name, address, employer, and job title; and
- e. If the person is a consultant or advisor for a party, provide a description of the nature of the person's consulting or advising practice, including the identity of his/her current, past, and expected clients.

Counsel shall deliver a copy of the signed statement including the information in (d) and (e) above to the party desiring confidentiality and to all parties of record. Such notification may be made via e-mail or facsimile. A person qualified under paragraph 3(c) shall not have

access to Non-Public Information sooner than five (5) business days after receipt of a copy of the signed statement including the information in (d) and (e) above by the party desiring confidentiality.

11. Subject to paragraphs 8 and 9, all qualified persons shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The party desiring to restrict the qualified person(s) from accessing specific Confidential Information must provide written notice to the qualified person(s) and counsel for the party associated with the qualified person(s) as soon as the party becomes aware of reasons to restrict access. The parties must promptly confer and attempt to resolve any dispute over access to Confidential Information on an informal basis before filing a motion with the Administrative Law Judge. If the dispute cannot be resolved informally, either party may file a motion with the Administrative Law Judge for resolution. Either party may also file a motion if the other party does not respond within five days to a request to resolve the dispute. A motion must describe in detail the intermediate measures, including selected redaction, explored by the parties and explain why such measures do not resolve the dispute. After receipt of the written notice as required in this paragraph, the specific Confidential Information shall not be disclosed to the qualified person(s) until the issue is resolved.

Preservation of Confidentiality-

12. All persons who are given access to any Non-Public Information by reason of this order may use the Non-Public Information for the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the Non-Public Information secure. Disclosure of Non-Public Information for any other purpose is strictly prohibited.

Duration of Protection-

13. The Commission shall preserve the confidentiality of Non-Public Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of confidential information.

Destruction After Proceeding-

14. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Non-Public Information to the extent reasonably necessary to maintain a file of this proceeding or to comply with requirements imposed by another governmental agency or court order. Any Non-Public Information that is retained may not be disclosed to any person. Any other person retaining Non-Public Information or documents containing Non-Public Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding, unless Pacific Power consents, in writing, to retention of the Non-Public Information or documents containing Non-Public Information. This paragraph does not apply to the Commission or Commission Staff.

Appeal to the Presiding Officer-

15. If a party disagrees with the designation of information as Non-Public Information, the party shall contact Pacific Power and attempt to resolve the dispute on an informal basis. If the parties are unable to resolve the dispute, the party desiring to use the information may move for exclusion of the information from the protection conferred by this order. The motion shall:

- a. Specifically identify the contested information, and
- b. Assert that the information does not fall within ORCP 36(C)(7) and state the reasons therefore.

The party resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the party resisting disclosure does not respond to the motion within ten (10) calendar days, the challenged information shall be removed from the protection of this order.

The information shall not be disclosed pending a ruling by the Administrative Law Judge on the motion.

Additional Protection-

16. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested;
- d. The specific reasons the requested relief is necessary; and
- e. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if released, shall not be disclosed pending the Commission's ruling on the motion.

SIGNATORY PAGE

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I. Consent to be Bound-

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

_____ PGE agrees to be bound by its terms of this Modified Protective Order.

By: _____
Signature & Printed
_____ Date

II. Persons Qualified pursuant to Paragraphs 3(a) through 3 (d)

_____ PGE identifies the following person(s) automatically qualified under paragraph 3(a) through (d).

_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date

III. Persons Qualified pursuant to Paragraph 3(e) and Paragraph 10.

I have read the Modified Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 10.

By: _____
Signature & Printed Date

By: _____
Signature & Printed Date

By: _____
Signature & Printed Date

By: _____
Signature & Printed Date
