

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 307

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2017 Transition Adjustment Mechanism.

MODIFIED PROTECTIVE ORDER

DISPOSITION: MODIFIED PROTECTIVE ORDER ISSUED

On June 24, 2016, PacifiCorp, dba Pacific Power, filed a motion for a modified protective order. The modified protective order encompasses the terms of the general protective order, but contains additional restrictions for information designated as Highly Protected Information.

An expedited telephone prehearing conference was held on June 29, 2016, to discuss the motion. Representatives appeared on behalf of PacifiCorp, dba Pacific Power; Citizens' Utility Board of Oregon (CUB); Industrial Customers of Northwest Utilities (ICNU); Noble Americas Energy Solutions (Noble Solutions); and Commission Staff.

PacifiCorp states that the modified protective order is needed to protect "trade secret" information that falls within the scope of ORCP 36(C)(7). PacifiCorp explains that Staff has requested information on the company's coal supply and transportation agreements, including third-party contracts and contracts between the company and the Bridger Coal Company. PacifiCorp explains that public disclosure of the information would harm the company's competitive position in the negotiation of future coal supply and coal transportation agreements because competitors would understand PacifiCorp's long-term fuel plans and the terms of its contracts. Thus, PacifiCorp requests that information designated as highly protected have two additional protections that go beyond the general protective order. First, Highly Protected Information will only be distributed to Staff, CUB, and the attorneys for the other parties, unless the company agrees to additional persons who complete, sign and file Appendix C. Second, to gain access to Highly Protected Information, a person must certify that they have a legitimate and non-competitive need for the information, and not simply a general interest in the information. The Highly Protected Information will also be printed on green paper.

At the conference, Staff and CUB stated they did not oppose the motion and asked that I promptly issue the modified protective order to allow discovery to continue. ICNU stated that it does not oppose the modified protective order, but asked to have a procedural path

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in the event that its counsel, who would have access to Highly Protected Information, wishes to share certain Highly Protected Information with its consultant. PacifiCorp did not oppose either request.

For future reference, I note that the Commission expedites review of any motion for a modified protective order.¹ Thus, Staff's request for the expedited conference was appropriate, and in the future parties should know that the default seven day response period will generally not apply to expedited consideration.²

PacifiCorp's motion is granted, with certain revisions to its proposed Modified Protective Order. First, I edited the proposed Modified Protective Order in light of the existing General Protective Order issued for TAM proceedings in Order No. 16-128. To avoid overlapping and duplicative provisions, the Modified Protective Order, attached as Appendix A, supplements Order No. 16-128 and governs only the access to and use of information designated as Highly Protected Information in this docket.

Second, to address ICNU's concern over its consultant having access to Highly Protected Information (if necessary), I included a provision allowing INCU or another party the ability to seek to qualify other persons for the purpose of accessing certain specific Highly Protected Information.

The Modified Protective Order, attached as Appendix A-C, is adopted.

JUN 30 2016

Made, entered, and effective on _____.



A handwritten signature in cursive script, reading "Sarah Rowe".

Sarah Rowe
Administrative Law Judge

¹ See OAR 860-001-0080(3)(b) ("The ALJ will provide expedited review of any motion for additional protection.").

² OAR 860-001-0420(4).

MODIFIED PROTECTIVE ORDER

DOCKET NO. UE 307

Scope of this Order:

1. This order supplements General Protective Order No. 16-128 and governs the acquisition and use of "Highly Protected Information" produced or used by any party in docket UE 307.

Designation of "Highly Protected Information":

2. Any party may designate as Highly Protected Information any information that 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 publically available; and
 - (c) Is not adequately protected by the general protective order.
3. 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 as Highly Protected Information only the portions of the information that satisfies paragraph 2 of this Modified Protective Order.

4. 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. 16-_____
AND CONTAINS HIGHLY PROTECTED INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO PERSONS
QUALIFIED TO ACCESS HIGHLY PROTECTED INFORMATION
AS DEFINED IN THE ORDER.

5. 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.

6. A party may designate as Highly Protected Information any information previously provided by giving written notice to the Commission and other parties. Parties in possession of newly designated 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.
7. A designating party must make reasonable efforts to ensure that information designated as 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 Highly Protected:

8. A party may informally challenge any designation of 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) and 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.
9. 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.
10. 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.
11. 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 ten business days of service of the last filing.

Access to Highly Protected Information:

12. Persons automatically bound and qualified to access Highly Protected Information are:
 - (a) Commission employees; and
 - (b) Assistant Attorney General assigned to represent the Commission.

13. The following persons are qualified to access Highly Protected Information upon completing Appendix B:
 - (a) An employee or counsel of the Regulatory Division at the Citizens' Utility Board; and
 - (b) Counsel for a party.
14. A party bound by the General Protective Order No. 16-128 may seek to qualify other persons to access certain specific Highly Protected Information by having those persons complete and sign Appendix C, and submitting that information to the designating party and the Commission. Within five business days of receiving a copy of Appendix C, the designating party must either provide the access to the requested information designated as Highly Protected Information or file an objection under paragraph 15.

Objection to Access to Protected Information:

15. 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, or objects to a person seeking qualification under Paragraph 14, the designating party must provide the 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.
16. 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 five business days of service of an objection. The ALJ will make all reasonable efforts to resolve the matter within ten business days of the last filing. Pending the ALJ's decision, the specific Highly Protected Information may not be disclosed to the person subject to the objection.

Use of Protected Information:

17. All Qualified Persons must take reasonable precautions to keep Highly Protected Information secure. Qualified Persons may reproduce Highly Protected Information only to the extent necessary to participate in these proceedings. A Qualified Person may discuss Highly Protected Information obtained under this order only with other Qualified Persons who have obtained the same information under this order.
18. Without the written permission of the designating party, any person given access to Highly Protected Information under this order may not disclose Highly Protected Information for any purpose other than participating in these proceedings.

19. 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.
20. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing 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 Highly 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 Highly Protected Information. This paragraph does not apply to the Commission or its Staff.

Duration of Protection:

21. The Commission will preserve the designation of information as 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 Highly Protected Information.

CONSENT TO BE BOUND AND SIGNATORY PAGE
DOCKET NO. UE 307

I. Consent to be Bound

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

Signature: _____

Printed: _____

Date: _____

II. Persons Qualified pursuant to Paragraph 13: 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: _____

III. Persons Seeking Qualification under Paragraph 14:

I have read the modified protective order, agree to be bound by the terms of the order, and provide the following information to seek access to certain specific information designated as Highly Confidential Information.

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

I seek access to the following specific information designated as Highly Protected Information for the following reasons: