

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 394

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of an Affiliated
Interest Transaction with BNSF Railway
Company.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On February 9, 2018, PacifiCorp, dba Pacific Power, filed a motion for a general protective order and 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, and thus the two motions are treated as one.

PacifiCorp states that its application in this proceeding includes a rail transportation services contract that contains confidential business information, the disclosure of which could expose PacifiCorp to competitive injury. Thus, PacifiCorp explains that a protective order is needed to protect trade secret information that falls within the scope of ORCP 36(C)(7).

PacifiCorp's motion also includes the information required by OAR 860-001-0080(3)(a)(A)-(E) for a modified protective order. PacifiCorp describes certain information contained in its filing or to be produced in this proceeding as highly confidential, including terms of the contract at issue such as price, volumes, extension terms, and unloading parameters. PacifiCorp states that the public release of highly confidential information would cause serious harm to it by compromising its negotiating power and ability to engage in business transactions competitively.

PacifiCorp seeks additional protections for information designated as highly protected that go beyond the general protective order. First, highly protected information will only be distributed to Commission Staff, CUB regulatory staff, and attorneys for the

parties. Second, the information designated as highly protected will be printed on green paper. Third, individuals who are not Commissioners, Commission Staff, CUB regulatory staff, or attorneys for a party must sign a signatory page and certify that they have a legitimate, non-competitive need for a specific item of highly protected information and not simply a general interest in the information before gaining access.

I have made minor technical edits to PacifiCorp's requested protective order to clarify that the modified protective order covers both protected information and highly protected information, and to clarify that that protected information is to be printed on yellow paper and highly confidential information is to be printed on green paper.

For good cause shown, the motions are granted. The modified protective order, which is attached, is adopted. A party may appeal this order to the Commission under OAR 860-001-0110.

ORDER

IT IS ORDERED that the modified protective order, attached, is adopted.

Made, entered, and effective on FEB 16 2018



A handwritten signature in blue ink, appearing to read "Allan J. Arlow", is written over a horizontal line.

Allan J. Arlow
Administrative Law Judge

MODIFIED PROTECTIVE ORDER

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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 extremely commercially sensitive and requires additional restrictions on who may access the information than that provided under the Commission's general protective order.
4. To designate information as Protected Information or Highly Protected Information, a party must place the following legend on the material:

[PROTECTED/HIGHLY PROTECTED] INFORMATION
SUBJECT TO GENERAL PROTECTIVE ORDER NO. 18-

The party should make reasonable efforts to designate as Protected Information or Highly Protected Information only the portions of the information covered by the above definitions.

5. Each page of a document containing Protected Information filed with the Commission and served on Qualified Persons under this order must be printed on yellow paper and placed in a sealed envelope or other appropriate container. Each page of a document containing Highly Protected Information filed with the Commission of provided to Qualified Persons under this order must be printed on green paper. Only the portions for a document that fall within the

above definitions may be placed in the envelope/container. The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. 18-_____
AND CONTAINS [PROTECTED/HIGHLY PROTECTED] INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO PERSONS
QUALIFIED TO ACCESS [PROTECTED/HIGHLY PROTECTED]
INFORMATION
AS DEFINED IN THE ORDER.

6. 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.
7. 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.
8. 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.
9. 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:

10. 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.

11. 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.
12. 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.
13. 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:

14. Only Qualified Persons may access Protected Information designated by another party under this Modified Protective Order. Persons automatically bound by this modified protective order and qualified to access Protected Information are:
 - (a) Commission employees; and
 - (b) Assistant Attorneys General assigned to represent the Commission.
15. 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.

16. A party bound by the modified 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.

17. Only Qualified Persons, as defined in paragraph 14, are automatically bound by this Modified Protective Order and qualified to access Highly Protected Information.
18. 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:

19. All persons qualified to have access to Protected Information or Highly Protected Information will have access to Protected Information or 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.
20. 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 and Highly Protected Information:

21. 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.

22. 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 or Highly Protected Information for any purpose other than participating in these proceedings.
23. 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.
24. 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:

25. 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
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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 to access Protected Information under Paragraph 15:

_____ (Party) identifies the following person(s) qualified under paragraph 15.

_____ (Party) identifies the following person(s) qualified under paragraph 12.

| PRINTED NAME | DATE |
|--------------|------|
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QUALIFICATION OF OTHER PERSONS

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III. Persons Seeking Qualification under Paragraph 16 to access Protected Information:

I have read the modified protective order, agree to be bound by the terms of the order, and provide the following information.

I have read the general 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
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I. Persons Qualified pursuant to Paragraph 18: 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 Protected 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: _____