

ENTERED FEB 20 2018

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1845

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of Final Draft  
2017R Request for Proposals.MODIFIED PROTECTIVE  
ORDER

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

On February 16, 2018, PacifiCorp, dba Pacific Power, filed a motion for a Modified Protective Order to provide additional protections for highly confidential bid information included in the company's request for acknowledgment of a final short list of bidders. PacifiCorp claims that bid information, and analysis and modeling based on that bid information, is highly sensitive, non-public commercial information, and that its disclosure would harm customers by compromising PacifiCorp's ability to successfully negotiate final agreements, and could result in less competitive bids in future RFPs.

PacifiCorp requests a Modified Protective Order be issued that includes two narrowly tailored protections. First, PacifiCorp requests on-site review of the highly confidential information for all intervenors, except Staff and the Oregon Citizens' Utility Board (CUB). PacifiCorp believes that preventing widespread distribution of the highly confidential information makes public disclosure less likely. Second, PacifiCorp requests that no access to highly confidential information be provided to persons currently or expected to be involved in the company's ongoing solicitation processes. These include persons who represent or advise current bidders, as well as persons that are reasonably expected to be involved in solicitations or negotiations of power purchase agreements within the next two years. PacifiCorp contends that prohibiting these persons access to highly confidential bid information helps ensure that bidders cannot, intentionally or not, obtain an unfair competitive advantage by relying on another bidder's information.

I conclude that PacifiCorp has established a legal basis for additional protection under OAR 860-001-0080(3)(a) and issue the attached Modified Protective Order to govern access to bid information that has been designated as "Highly Protected Information." I do not, however, adopt PacifiCorp's proposed Modified Protective Order that was attached to its motion, as that order also proposed to subsume and replace the existing General Protective Order No. 17-218. To avoid the need for parties to submit new signatory pages and file lists

of qualified persons to in order to continue to access "Protected Information," I adopt here a stand-alone Modified Protective Order to govern access to "Highly Confidential Information." General Protective Order No. 17-218 will continue to govern access to "Protected Information."

I also adopt the Modified Protective Order on an expedited basis, prior to the deadline for the filing of any objections. I do so to help facilitate the exchange of information needed to help inform the March 2, 2018 filing of party comments to the Independent Evaluator's Report. This quick action does not foreclose a party from seeking reconsideration of this decision.

Made, entered, and effective FEB 20 2018.



A handwritten signature in blue ink, appearing to read "Michael Grant", is written over a horizontal line.

Michael Grant  
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2).

**MODIFIED PROTECTIVE ORDER**

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**Scope of this Order:**

1. This order governs the acquisition and use of "Highly Protected Information" produced or used by any party to these proceedings. General Protective Order No. 17-218 governs the acquisition and use of "Protected Information."

**Designation of "Highly Protected Information":**

2. Any party may designate as Highly 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; and
  - (c) Is extremely commercially sensitive and requires additional restrictions on who may access the information than that provided under the Commission's 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 GENERAL PROTECTIVE ORDER NO. 18 - \_\_\_\_

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

4. Each page of a document containing Highly Protected Information filed with the Commission or provided to Qualified Persons under this order must be printed on green paper. Only the portions of 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 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 bears the burden of showing that the "Highly Protected Information" designation is necessary.
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 10 business days of service of the last filing.

#### **Access to Highly Protected Information:**

12. Only Qualified Persons may access Highly Protected Information designated by another party under this Modified Protective Order. Persons automatically bound by this protective order and qualified to access Highly Protected Information are:
  - (a) Commission employees; and
  - (b) Assistant Attorneys General assigned to represent the Commission.
13. Persons qualified to access Highly Protected Information upon signing the Signatory Page for Highly Protected Information, Appendix B, are:

- (a) An employee or counsel of the Regulatory Division at the Oregon Citizens' Utility Board; and
  - (b) Persons that are not involved in PacifiCorp's ongoing solicitation processes as bidders, including persons who represent or advise bidders, or persons that reasonably expect to be involved in solicitations or negotiations of power purchase agreements within the next two years.
14. Access to Highly Protected Information will be provided to all persons qualified under paragraph 13(b) only at PacifiCorp's offices. PacifiCorp will distribute Highly Protected Information to only those persons qualified under paragraphs 12 and 13(a).

**Objection to Access to Highly 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, 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.
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 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 Highly Protected Information may not be disclosed to the person subject to the objection.

**Use of Highly 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.
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.

**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.

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**I. 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 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: \_\_\_\_\_