

McDowell Rackner & Gibson pc



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March 23, 2010

VIA ELECTRONIC FILING ANDP FIRST CLASS MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket UE 219 – In the Matter of PacifiCorp’s Application to Implement Provisions of Senate Bill 76.

Enclosed for filing in conjunction with the above captioned docket are the original and one copy of PacifiCorp’s Motion for Modified Protective Order.

To facilitate the Company’s filing of confidential and highly confidential material, PacifiCorp respectfully requests expedited consideration of this Motion.

Very truly yours,

Amie Jamieson

Enclosure

Cc: Bob Jenks, Citizens’ Utility Board of Oregon
Irion Sanger, Industrial Customers of Northwest Utilities
David Hatton, Oregon Department of Justice

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UE 219**

4 In the Matter of PacifiCorp's Application
5 to Implement Provisions of Senate Bill 76.

MOTION FOR MODIFIED
PROTECTIVE ORDER

6 Expedited Consideration Requested
7

8 Pursuant to ORCP 36(C)(7) and OAR 860-012-0035(1)(k), PacifiCorp d/b/a Pacific
9 Power ("Company") moves for the expedited entry of a modified protective order in this
10 proceeding ("Modified Protective Order"). PacifiCorp requests that the Public Utility
11 Commission of Oregon ("Commission") modify its standard protective order to provide
12 additional protective measures for highly confidential "analyses or studies that relate to the
13 rate-related costs, benefits and risks for customers of removing or relicensing Klamath River
14 dams," required to be filed in this proceeding by ORS 757.736(1) ("Highly Confidential
15 Information"). In compliance with this statute, PacifiCorp filed responsive analyses and
16 studies with its Application in this case. In its filing, however, PacifiCorp noted that it had
17 certain analyses and studies which were highly confidential. PacifiCorp indicated that it would
18 seek a protective order to govern the filing, review, and use of this information.

19 PacifiCorp's Highly Confidential Information consists of analyses or studies called for
20 under ORS 757.736(1) which could be used to the detriment of PacifiCorp and its customers in
21 relicensing proceedings for the Klamath River Project ("Project"). While PacifiCorp is not
22 now pursuing relicensing of the Project because of its execution of the Klamath Hydroelectric
23 Settlement Agreement ("KHSA"), relicensing proceedings could recommence in the future if
24 implementation of the KHSA is unsuccessful. Therefore, PacifiCorp requests that the
25 Commission issue a Modified Protective Order that would: (1) permit the Highly Confidential
26 Information to be filed under a special, Highly Confidential seal with the Commission;

1 (2) restrict access to Highly Confidential Information to prevent parties and individuals who
2 may participate in any relicensing process for the Project, including settlement negotiations,
3 from viewing Highly Confidential Information; (3) provide for review of the Highly
4 Confidential Information at the Company's Portland office or a mutually agreeable location
5 with a Company representative present and with copying prohibited; and (4) provide standard
6 confidentiality protections to the Company's regular, confidential information.

7 **I. BACKGROUND**

8 On March 18, 2010, the Company filed its Application to Implement Provisions of
9 Senate Bill 76 ("Application"). Through the Application and concurrently filed Advice No.
10 10-008, PacifiCorp sought to implement various provisions of SB 76,¹ including the
11 requirement of ORS 757.736(1) that within 30 days of the execution, PacifiCorp file a copy of
12 the KHSA with the Commission, along with certain studies and analyses relating to removing
13 or relicensing the Project.

14 ORS 757.736(6) contemplates the protection of PacifiCorp's commercially sensitive
15 information related to the KHSA, stating:

16 The commission may not use any commercially sensitive
17 information provided to the commission in a filing made under
18 subsection (1) of this section for any purpose other than
19 determining whether the imposition of surcharges under the terms
20 of the final agreement results in rates that are fair, just and
21 reasonable. Notwithstanding ORS 192.410 to 192.505, the
22 commission may not release commercially sensitive information
provided to the commission under this section, and shall require
any person participating in a proceeding relating to the surcharge
to sign a protective order prepared by the commission before
allowing the participant to obtain and use the information.

23 This language is very similar to that contained in another recent utility-related statute,
24 ORS 757.268(11), addressing the protection of commercially sensitive utility tax information.

25 ¹ SB 76 is codified at 757.732 through 757.744.
26

1 The Commission previously found that heightened protection was necessary to
2 implement a similar statute related to utility tax information. ORS 757.268(11) relating to
3 utility tax information states:

4 The commission may not use the tax information obtained by the
5 commission under this section for any purpose other than those
6 described in subsections (1) to (10) of this section. An intervenor
7 in a commission proceeding to review the tax report or make rate
8 adjustments described in this section may, upon signing a
9 protective order prepared by the commission, obtain and use the
information obtained by the commission that is not otherwise
required to be made publicly available under this section,
according to the terms of the protective order.

10 To implement ORS 757.268(11), the Commission issued a modified protective order to protect
11 highly confidential information. *Re PacifiCorp, et al.*, Dockets UE 177, UE 178, UG 170 &
12 UG 171, Order No. 06-033 (Jan. 25, 2006). The modified protective order provided for a
13 “Safe Room” discovery mechanism whereby parties that have signed the protective order may
14 view highly confidential material in a Safe Room, but may not copy the material. The
15 Commission has found the protective order relating to utility tax reports to be consistent with
16 ORS 757.268(11) and necessary to protect highly confidential tax material on a number of
17 occasions. *Re PacifiCorp Filing of Tariffs Establishing Automatic Adjustment Clauses Under*
18 *the Terms of SB 408*, Docket UE 177, Ruling (Oct. 27, 2008).

19 The Commission has also issued special protective orders to protect highly sensitive
20 bidding information from disclosure. In Order No. 09-160 in Docket UM 1368, the
21 Commission issued a special protective order to protect highly commercially sensitive, non-
22 public information related to a utility’s solicitation for new resources, including bid evaluation
23 results and bid scoring. Order No. 09-160 at 1. Such orders have prevented bidding parties
24 from accessing highly confidential information.

25 Both SB 76 and Commission precedent support the Company’s request for heightened
26 protection in this proceeding. As discussed below, the Company has narrowly tailored its

1 request to allow access as necessary to evaluate the Company's Application, but also protect
2 the Company from harm to its negotiating position in the event of future relicensing settlement
3 discussions.

4 **B. Terms of the Proposed Modified Protective Order.**

5 PacifiCorp requests that the Commission adopt a Modified Protective Order that
6 includes terms substantially similar to the proposed order attached hereto as Attachment A.
7 Attached as Attachment B is a redline document showing changes from the Commission's
8 Standard Protective Order to facilitate the Commission's review of this motion. The proposed
9 Modified Protective Order balances the need for additional protection for Highly Confidential
10 Information with the need to provide access to such information for purposes of reviewing the
11 Company's Application.

12 First, the proposed Modified Protective Order provides that Highly Confidential
13 Information will be filed under a special, Highly Confidential seal with the Commission.

14 Second, the proposed Modified Protective Order requires that, with respect to Highly
15 Confidential Information, the standard definition of "qualified person" be modified to exclude
16 (1) individuals associated with parties that are or will in the future participate in relicensing
17 proceedings or settlement discussions related to the Project; (2) individuals who are
18 participating or will participate in such activities; or (3) individuals who are associated with a
19 law firm or consulting entity that represents any party that is participating or will participate in
20 such activities, whether or not that party is a party to this proceeding. For this last exclusion,
21 the Company proposes an exception for attorneys, consultants, or advisors who provide an
22 affidavit explaining the screening procedures that the law firm or consulting entity has in place
23 to (1) prevent individuals who review Highly Confidential Information from working on or
24 participating in relicensing proceedings or settlement discussions related to the Project and (2)
25 prevent sharing of Highly Confidential Information with members of the same organization
26 who are not qualified to view Highly Confidential Information.

1 For the foregoing reasons, PacifiCorp requests expedited entry of a Modified Protective
2 Order in this docket.

3
4 DATED: March 23, 2010.

McDowell Rackner & Gibson PC

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6 

7 Katherine McDowell
Amie Jamieson

8 Attorneys for PacifiCorp

9 PACIFICORP

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UE 219

Attachment A

March 23, 2010

MODIFIED PROTECTIVE ORDER
DOCKET NO. UE 219

Scope of this Order-

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

Definitions-

2. “Confidential Information” is information that falls within the scope of ORCP 36(C)(7) (“a trade secret or other confidential research, development, or commercial information”).

3. “Highly Confidential Information” consists of analyses or studies PacifiCorp is required to file with the Commission under ORS 757.736(1) that fall within the scope of ORCP 36(c)(7) (“a trade secret or other confidential research, development, or commercial information”) and which could be used to the detriment of PacifiCorp and its customers in future relicensing proceedings for the Klamath River Project (“Project”).

4. With respect to Confidential Information, 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. Counsel of record for a party;
- d. A person employed directly by counsel of record; or
- e. A person qualified pursuant to paragraph 14. This includes parties and their employees.

5. With respect to Highly Confidential Information, 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. With respect to counsel of record for a party, a person employed directly by counsel of record, or a person eligible to be qualified pursuant to paragraph 14, including parties and their employees, the individual may not be a qualified person if: (1) the party is participating or in the future will participate in relicensing proceedings, including settlement discussions, related to the Project; (2) the individual seeking to be qualified is participating or in the future will participate in relicensing proceedings, including settlement discussions, related to the Project; or (3) the individual is associated with a law firm or consulting entity that

represents any party that is participating or in the future will participate in relicensing proceedings, including settlement discussions, related to the Project, whether or not that party is a party to this proceeding.

However, counsel of record for a party, a person employed directly by counsel of record, a consultant, or an advisor excluded under subsection 5(c)(3) above may be a qualified person if they provide an affidavit explaining the screening procedures that the law firm or consulting entity has in place to (1) prevent individuals who review Highly Confidential Information from working on or participating in any relicensing proceedings or settlement discussions related to the Project and (2) prevent sharing of Highly Confidential Information with members of the same organization who are not qualified to view Highly Confidential Information. Advisors and consultants qualified under this paragraph must also meet the requirements paragraph 14.

- d. Subject to the exclusions in paragraph 5(c) above, counsel of record for a party;
- e. Subject to the exclusions in paragraph 5(c) above, a person employed directly by counsel of record; or
- f. Subject to the exclusions in paragraph 5(c) above, a person qualified pursuant to paragraph 14. This includes parties and their employees.

Designation of Confidential Information-

6. A party providing Confidential Information shall inform other parties that the material has been designated confidential by placing the following legend on the information:

CONFIDENTIAL
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party shall designate as confidential only those portions of the document that fall within ORCP 36(C)(7).

7. 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.

Designation of Highly Confidential Information

8. The Company shall designate Highly Confidential Information by placing the following legend on the information:

HIGHLY CONFIDENTIAL
SUBJECT TO MODIFIED PROTECTIVE ORDER

Information Given to the Commission-

9. Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on yellow paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER NO. _____ AND
CONTAINS CONFIDENTIAL INFORMATION. THE INFORMATION MAY
BE SHOWN ONLY TO QUALIFIED PERSONS AS DEFINED IN THE
ORDER.

10. Highly Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on GREEN paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER NO. _____ AND
CONTAINS HIGHLY CONFIDENTIAL INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED PERSONS AS
DEFINED IN THE ORDER.

11. The Commission's Administrative Hearings Division shall store the Confidential Information and Highly Confidential Information in a locked cabinet dedicated to the storage of Confidential Information and Highly Confidential Information.

Disclosure of Confidential Information or Highly Confidential Information-

12. Confidential Information. Parties desiring receipt of Confidential Information shall sign the Consent to be Bound Form attached as Appendix B. This requirement does not apply to the Commission staff. Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 4. When feasible, Confidential Information shall be delivered to counsel. In the alternative, Confidential 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.

Highly Confidential Information. Parties desiring review of Highly Confidential Information shall sign the Consent to be Bound Form attached as Appendix C. Parties desiring review of Highly Confidential Information shall submit a request for inspection and review via

electronic mail to PacifiCorp's counsel of record in this proceeding, or other person designated by the counsel of record, to schedule a time to access the Highly Confidential Information. The Company shall provide access to the Highly Confidential Information to qualified persons at the Company's offices in Portland, Oregon, between the hours of 9 a.m. and noon and 1 p.m. and 5 p.m., excluding holidays, or at a time and place mutually agreeable to the Company and the qualified person. Qualified persons shall provide the Company with 24-hour notice prior to review. The Company may require the presence of a monitor during inspection and review.

13. Qualified persons may disclose Confidential Information to any other qualified person, unless the party desiring confidentiality protests as provided in Section 15. Qualified persons may disclose Highly Confidential Information only to other persons qualified to view Highly Confidential Information, unless the party desiring confidentiality protests as provided in Section 15.

14. To become a qualified person under paragraph 4(e) or 5(e), a person must:

- a. Read a copy of this Modified Protective Order;
- b. Execute the Consent to be Bound Form relevant to Confidential Information or Highly Confidential Information, as applicable;
- 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 4(e) shall not have access to Confidential 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.

15. All qualified persons shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The qualified persons who have signed the Consent to be Bound relevant to Highly Confidential Information shall have access to Highly 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 or Highly 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 or Highly 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 or Highly Confidential Information shall not be disclosed to the qualified person(s) until the issue is resolved.

Preservation of Confidentiality-

16. All persons who are given access to Confidential Information or Highly Confidential Information by reason of this order shall not use or disclose the Confidential Information or Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the Confidential Information secure. Disclosure of Confidential Information or Highly Confidential Information for purposes of business competition is strictly prohibited.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce Confidential Information to the extent necessary for the preparation and conduct of this proceeding. Qualified persons may disclose Confidential Information only to other qualified persons associated with the same party.

Qualified persons are not authorized to, and shall not make, copies of any document designated as containing Highly Confidential Information. Qualified persons reviewing Highly Confidential Information may make limited notes regarding the documents for reference purposes only. Such notes shall not constitute a verbatim or substantive transcript of the documents, and shall be considered Confidential Information.

Duration of Protection-

17. The Commission shall preserve the confidentiality of Confidential 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 preserve the confidentiality of Highly Confidential Information indefinitely. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of Confidential Information or Highly Confidential Information.

Destruction After Proceeding-

18. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Confidential 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. The information retained may not be disclosed to any person. Any other person retaining Confidential Information or documents containing such Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Confidential Information or documents containing such Confidential Information. This paragraph does not apply to the Commission or its Staff.

Appeal to the Presiding Officer-

19. If a party disagrees with the designation of information as confidential, the party shall contact the designating party 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-

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.

UE 219

Attachment B

March 23, 2010

MODIFIED PROTECTIVE ORDER
DOCKET NO. UE 219

Scope of this Order-

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

Definitions-

2. “Confidential Information” is information that falls within the scope of ORCP 36(C)(7) (“a trade secret or other confidential research, development, or commercial information”).

3. “Highly Confidential Information” consists of analyses or studies PacifiCorp is required to file with the Commission under ORS 757.736(1) that fall within the scope of ORCP 36(c)(7) (“a trade secret or other confidential research, development, or commercial information”) and which could be used to the detriment of PacifiCorp and its customers in future relicensing proceedings for the Klamath River Project (“Project”).

34. With respect to Confidential Information, Aa “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. Counsel of record for a party;
- d. A person employed directly by counsel of record; or
- e. A person qualified pursuant to paragraph 14. This includes parties and their employees.

5. With respect to Highly Confidential Information, 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. With respect to counsel of record for a party, a person employed directly by counsel of record, or a person eligible to be qualified pursuant to paragraph 14, including parties and their employees, the individual may not be a qualified person if: (1) the party is participating or in the future will participate in relicensing proceedings, including settlement discussions, related to the Project; (2) the individual seeking to be qualified is participating or in the future will participate in relicensing proceedings, including settlement discussions, related to the Project; or (3) the individual is associated with a law firm or consulting entity that

represents any party that is participating or in the future will participate in relicensing proceedings, including settlement discussions, related to the Project, whether or not that party is a party to this proceeding.

However, counsel of record for a party, a person employed directly by counsel of record, a consultant, or an advisor excluded under subsection 5(c)(3) above may be a qualified person if they provide an affidavit explaining the screening procedures that the law firm or consulting entity has in place to (1) prevent individuals who review Highly Confidential Information from working on or participating in any relicensing proceedings or settlement discussions related to the Project and (2) prevent sharing of Highly Confidential Information with members of the same organization who are not qualified to view Highly Confidential Information. Advisors and consultants qualified under this paragraph must also meet the requirements paragraph 14.

- d. Subject to the exclusions in paragraph 5(c) above, counsel of record for a party;
- e. Subject to the exclusions in paragraph 5(c) above, a person employed directly by counsel of record; or
- f. Subject to the exclusions in paragraph 5(c) above, a person qualified pursuant to paragraph 14. This includes parties and their employees.

Designation of Confidential Information-

64. A party providing Confidential Information shall inform other parties that the material has been designated confidential by placing the following legend on the information:

CONFIDENTIAL
SUBJECT TO ~~GENERAL~~ MODIFIED PROTECTIVE ORDER

To the extent practicable, the party shall designate as confidential only those portions of the document that fall within ORCP 36(C)(7).

75. 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.

Designation of Highly Confidential Information

8. The Company shall designate Highly Confidential Information by placing the following legend on the information:

HIGHLY CONFIDENTIAL
SUBJECT TO MODIFIED PROTECTIVE ORDER

Information Given to the Commission-

96. Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on yellow paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER NO. _____ AND
CONTAINS CONFIDENTIAL INFORMATION. THE INFORMATION MAY
BE SHOWN ONLY TO QUALIFIED PERSONS AS DEFINED IN THE
ORDER.

10. Highly Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on GREEN paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER NO. _____ AND
CONTAINS HIGHLY CONFIDENTIAL INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED PERSONS AS
DEFINED IN THE ORDER.

911. The Commission's Administrative Hearings Division shall store the Confidential Information and Highly Confidential Information in a locked cabinet dedicated to the storage of Confidential Information and Highly Confidential Information.

Disclosure of Confidential Information or Highly Confidential Information-

12. Confidential Information. Parties desiring receipt of Confidential Information shall sign the Consent to be Bound Form attached as Appendix B. This requirement does not apply to the Commission staff. Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 4. When feasible, Confidential Information shall be delivered to counsel. In the alternative, Confidential 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.

Highly Confidential Information. Parties desiring review of Highly Confidential Information shall sign the Consent to be Bound Form attached as Appendix C. Parties desiring review of Highly Confidential Information shall submit a request for inspection and review via

electronic mail to PacifiCorp's counsel of record in this proceeding, or other person designated by the counsel of record, to schedule a time to access the Highly Confidential Information. The Company shall provide access to the Highly Confidential Information to qualified persons at the Company's offices in Portland, Oregon, between the hours of 9 a.m. and noon and 1 p.m. and 5 p.m., excluding holidays, or at a time and place mutually agreeable to the Company and the qualified person. Qualified persons shall provide the Company with 24-hour notice prior to review. The Company may require the presence of a monitor during inspection and review.

143. Qualified persons may disclose Confidential Information to any other qualified person, unless the party desiring confidentiality protests as provided in Section 1415. Qualified persons may disclose Highly Confidential Information only to other persons qualified to view Highly Confidential Information, unless the party desiring confidentiality protests as provided in Section 15.

124. To become a qualified person under paragraph 43(e) or 5(e), a person must:

- a. Read a copy of this ~~General~~ Modified Protective Order;
- b. Execute the Consent to be Bound Form relevant to Confidential Information or Highly Confidential Information, as applicable ~~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 43(e) shall not have access to Confidential 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.

135. All qualified persons shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The qualified persons who have signed the Consent to be Bound relevant to Highly Confidential Information shall have access to Highly 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 or Highly 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 or Highly 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 or Highly Confidential Information shall not be disclosed to the qualified person(s) until the issue is resolved.

Preservation of Confidentiality-

146. All persons who are given access to Confidential Information or Highly Confidential Information by reason of this order shall not use or disclose the Confidential Information or Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the Confidential Information secure. Disclosure of Confidential Information or Highly Confidential Information for purposes of business competition is strictly prohibited.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce Confidential Information to the extent necessary for the preparation and conduct of this proceeding. Qualified persons may disclose Confidential Information only to other qualified persons associated with the same party.

Qualified persons are not authorized to, and shall not make, copies of any document designated as containing Highly Confidential Information. Qualified persons reviewing Highly Confidential Information may make limited notes regarding the documents for reference purposes only. Such notes shall not constitute a verbatim or substantive transcript of the documents, and shall be considered Confidential Information.

Duration of Protection-

157. The Commission shall preserve the confidentiality of Confidential 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 preserve the confidentiality of Highly Confidential Information indefinitely. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of Confidential Information or Highly Confidential Information.

Destruction After Proceeding-

168. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Confidential 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. The information retained may not be disclosed to any person. Any other person retaining Confidential Information or documents containing such Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Confidential Information or documents containing such Confidential Information. This paragraph does not apply to the Commission or its Staff.

Appeal to the Presiding Officer-

179. If a party disagrees with the designation of information as confidential, the party shall contact the designating party 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-

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.