

# McDowell Rackner & Gibson PC



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June 27, 2011

## VIA ELECTRONIC AND U.S. MAIL

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

Re: **UE 227 – PacifiCorp’s 2012 Transition Adjustment Mechanism**

Attention Filing Center:

Enclosed for filing in the captioned docket are the original and one copy of PacifiCorp’s Motion for Modified Protective Order. A copy of this filing was served on all parties to this proceeding as indicated on the attached Certificate of Service.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Amie Jamieson', written over a horizontal line.

Amie Jamieson

cc: Service List

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

3 **UE 227**

4 In the Matter of:

5 PACIFICORP, dba PACIFIC POWER  
6 2012 Transition Adjustment Mechanism

**MOTION FOR  
MODIFIED PROTECTIVE ORDER**

7 Pursuant to OAR 860-001-0080(4) and Paragraph 16 of General Protective Order No.  
8 10-069 issued in Docket UE 216, PacifiCorp d/b/a Pacific Power (PacifiCorp or Company)  
9 submits this Motion for Modified Protective Order (Motion) to the Public Utility Commission of  
10 Oregon (Commission). PacifiCorp requests that the modified protective order apply in this  
11 docket and future PacifiCorp transition adjustment mechanism (TAM) proceedings. Staff, the  
12 Industrial Customers of Northwest Utilities (ICNU), and the Citizens' Utility Board of Oregon  
13 (CUB) support the adoption of this Highly Confidential protective order, but do not take a  
14 position regarding whether any particular information should be treated as "Highly  
15 Confidential." Staff, ICNU, and CUB reserve the right to challenge paragraph 15 relating to  
16 retention of documents in the future.

17 **I. INTRODUCTION AND BACKGROUND**

18 PacifiCorp requests that the Commission modify its standard protective order to  
19 provide additional protective measures for Highly Confidential information. In the Company's  
20 prior rate cases and TAM dockets, the Company has addressed review of Highly Confidential  
21 information on a case-by-case basis. In this case, to facilitate discovery, the Company  
22 produced information that the Company has designated as "Highly Confidential" to ICNU  
23 under the terms of an informal agreement. This information is related to the Company's  
24 Official Forward Price Curve (OFPC). This motion seeks to formalize the terms and  
25 conditions of this informal agreement, as outlined in the proposed Modified Protective Order

1 attached as Exhibit 1 to this Motion. As discussed below, the proposed protections are  
2 reasonable in light of the harm that would result from disclosure.

## 3 II. DISCUSSION

4 The General Protective Order in this proceeding allows a party desiring additional  
5 protection to “move for any of the remedies set forth in ORCP 36(C).” Order No. 10-069 at ¶  
6 16. ORCP 36(C)(2) provides that a party may show good cause that “discovery may be had  
7 only on specified terms and conditions, including a designation of the time or place.” This  
8 motion sets forth good cause and the information required by Paragraph 16 of the General  
9 Protective Order showing that additional protection of the information described above is  
10 necessary.

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12 protection to “move for any of the remedies set forth in ORCP 36(C).” Order No. 10-069 at  
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14 only on specified terms and conditions, including a designation of the time or place.” This  
15 motion sets forth good cause and the information required by Paragraph 16 of the General  
16 Protective Order showing that additional protection of the information described above is  
17 necessary.

18 Certain information related to the Company’s net power costs may be extremely  
19 sensitive. The Highly Confidential protective order would allow PacifiCorp to provide this  
20 information to the Commission, Staff and parties that are pre-certified to receive funding  
21 pursuant to OAR 860-001-0120 on similar terms as regular confidential information. Parties  
22 that compete with PacifiCorp, but may participate in TAM proceedings, would not have access  
23 to the Highly Confidential information. Any party could challenge the designation of the  
24 information as Highly Confidential.

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1 DATED: June 27, 2011.

MCDOWELL RACKNER & GIBSON PC

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Amie Jamieson

5 Attorneys for PacifiCorp

6 PACIFICORP

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## **EXHIBIT 1**

### **PROPOSED MODIFIED PROTECTIVE ORDER DOCKET NO. UE 227**

#### **Scope of this Order-**

1. This order governs the acquisition and use of “Highly Confidential Information” in this proceeding and all future Transition Adjustment Mechanism (TAM) proceedings filed by PacifiCorp unless the Commission orders otherwise.

#### **Definitions-**

2. “Highly Confidential Information” consists of commercially sensitive information that falls within the scope of ORCP 36(C)(7) (“a trade secret or other confidential research, development, or commercial information”); the public disclosure of which or disclosure to competitors of PacifiCorp would harm the Company’s competitive position in the market place, resulting in harm to customers.

3. With respect to Highly Confidential Information, a “Qualified Person” is an individual who is:

- a. An author, addressee, or originator of Highly Confidential Information;
- b. A Commissioner, Administrative Law Judge (ALJ), Commission staff, or counsel for Commission Staff; or
- c. Counsel of record for, a person directly employed by counsel of record for, employee of, or consultant or advisor for parties that are pre-certified to receive funding pursuant to OAR 860-001-0120.

#### **Designation of Highly Confidential Information-**

4. A party providing Highly Confidential Information must inform other parties that the material has been designated Highly Confidential by placing the following legend on the material:

HIGHLY CONFIDENTIAL INFORMATION  
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party may designate as Highly Confidential only the portions of the material covered by this order.

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

6. Any other party may challenge the designation of information as Highly Confidential by notifying the designating party. Once notified, the designating party bears the burden of showing that the challenged information is covered by this order.

**Information Given to the Commission-**

7. 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. 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.

8. The Commission's Administrative Hearings Division shall store the Highly Confidential Information in a locked cabinet dedicated to the storage of Highly Confidential Information. CUB shall store hard copy paper and CD ROM Highly Confidential Information in a locked room dedicated for use by the Regulatory Program and the storage of Highly Confidential information.

**Disclosure of Highly Confidential Information-**

9. To receive Highly Confidential Information, all parties except Commission Staff must sign the "consent to be bound" attached as Appendix A. Highly Confidential Information may not be disclosed to any person other than a Qualified Person. When feasible, Highly Confidential Information must be delivered to counsel. In the alternative, Highly 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 ALJ.

10. A Qualified Person may disclose Highly Confidential Information to any other Qualified Person associated with the same party, unless the designating party protests as provided in paragraph 12.

11. To become a Qualified Person under paragraph 3, a person must:

- a. Read a copy of this Modified Protective Order;
- b. Execute the Consent to be Bound Form relevant to Highly Confidential Information;
- 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 must deliver a copy of the signed statement including the information in (d) and (e) above to the designating party and to all parties of record. Such notification may be made via e-mail or facsimile. A person qualified under paragraph 3(c) may not have access to Highly Confidential Information sooner than seven days after the designating party receives a copy of the signed statement.

12. All Qualified Persons may have access to Highly Confidential Information, unless the designating party objects as provided in this paragraph. The designating party must provide written notice to the Qualified Person and counsel for the party associated with the Qualified Person as soon as the designating party becomes aware of reasons to restrict access. The parties must promptly confer and attempt to resolve any dispute over access to Highly Confidential Information on an informal basis before filing a motion with the ALJ. After receipt of the written notice as required in this paragraph, the specific Highly Confidential Information may not be disclosed to the Qualified Person until the issue is resolved.

#### **Preservation of Confidentiality-**

13. Without the written permission of the designating party, any person given access to Highly Confidential Information under this order may not use or disclose Highly Confidential Information for any purpose other than participating in these proceedings. All Qualified Persons must take reasonable precautions to keep Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.

Qualified Persons are not authorized to, and shall not make, copies of any document designated as containing Highly Confidential Information (except as necessary to reference the information in confidential testimony, legal memoranda, cross-examination exhibits, or in a pleading) or seek to use such Highly Confidential Information in any other proceeding without permission of the designating party. A Qualified Person may disclose Highly Confidential Information only to other Qualified Persons associated with the same party.

When providing Highly Confidential Information to Qualified Persons, the designating party may request additional protections or restrictions regarding the Highly Confidential Information. If the parties cannot resolve any dispute regarding the handling of the Highly Confidential Information, the dispute shall be resolved pursuant to Sections 12, 16 and 17 of this Modified Protective Order.

#### **Duration of Protection-**

14. The Commission will 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 Highly Confidential Information.



### **Destruction After Proceeding-**

15. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents Highly 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 Highly Confidential Information or documents containing such Highly Confidential Information must destroy or return it to the designating party within 90 days after final resolution of this proceeding unless the designating party consents in writing to retention of the Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

### **Appeal to the Presiding Officer-**

16. Any party may request that the ALJ conduct a conference to help resolve disputes related to this protective order.

A party challenging the designation of information as Highly Confidential may file an objection with the ALJ that identifies the information in dispute and includes a certification that reasonable efforts to achieve an informal resolution have been unsuccessful. Within seven days of the objection, unless otherwise ordered by the ALJ, the designating party must either remove the Highly Confidential designation or file a written response identifying the legal basis for the claim of high confidentiality. The challenging party may file a written reply to any response within seven days. If the designating party does not timely respond to the motion, the Commission will remove the Highly Confidential designation from the challenged information.

### **Additional Protection-**

17. This order does not limit the ability of PacifiCorp to propose additional protections or special handling procedures for material that PacifiCorp believes will not be adequately protected from disclosure under the terms of the Highly Confidential protective order. Neither does it limit the ability of parties to object to any such request.

If a designating party seeks additional protection for Highly Confidential Information, the party may move for any of the remedies in ORCP 36(C). The motion must include:

- a. The parties involved;
- b. The exact nature of the information involved;
- c. The legal basis for the claim that the information is protected under ORCP 36(C)(7) or the Public Records Law;
- d. The exact nature of the relief requested;
- e. The specific reasons the requested relief is necessary; and
- f. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why these measures are insufficient.

Pending the Commission's ruling on a motion for additional protection, the information involved need not be released.



**II. Consent to be Bound-**

This Modified Protective Order governs the use of “Highly Confidential Information” in this proceeding and all future PacifiCorp Transition Adjustment Mechanism proceedings.

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 12.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing document in UE 227 on the following named person(s) on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below.

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DATED: June 27, 2011

  
Amie Jamieson