

February 8, 2024

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301-3398

Re: UE 434—PacifiCorp’s Motion for a Modified Protective Order
Expedited Consideration Requested

On February 7, 2024, PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) filed a Motion for Motion for Modified Protective Order with Expedited Consideration Requested, noting that entry of a modified protective order will prevent delay in providing highly confidential information when PacifiCorp files its annual transition adjustment mechanism filing, which was pre-assigned docket number UE 434, on February 14, 2024. The Company was notified of certain clerical errors in the filing and submits this corrected Motion for Modified Protective Order with Expedited Consideration Requested to replace the previously filed Motion for Modified Protective Order in its entirety.

Please direct any inquiries about this filing to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,



Matthew McVee
Vice President, Regulatory Policy and Operations

Enclosure

**BEFORE THE PUBLIC UTILITY
COMMISSION OF OREGON**

UE 434

In the Matter of
PACIFICORP, d/b/a PACIFIC POWER,
2025 Transition Adjustment Mechanism

PACIFICORP'S MOTION FOR
MODIFIED PROTECTIVE ORDER
Expedited Consideration Requested

I. INTRODUCTION

Under OAR 860-001-0420 and OAR 860-001-0080(3), PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) moves the Public Utility Commission of Oregon (Commission) for entry of a Modified Protective Order in these proceedings.¹ Specifically, PacifiCorp requests the Administrative Law Judge issue the Modified Protective Order attached as Appendix A to this Motion. A Modified Protective Order would provide additional protection for highly commercially sensitive, non-public information related to PacifiCorp's coal supply agreements, fueling strategy at its coal-fired generation facilities, and the documents and records of affiliated coal mining companies. PacifiCorp notes that the proposed Modified Protective Order contains the same protections that were agreed to by the parties in PacifiCorp's 2021 Integrated Resource Plan (IRP), docket LC 77, and adopted in the 2023 TAM (UE 400) and 2024 TAM (UE 420).

The 2021 Transition Adjustment Mechanism (TAM) stipulation adopted by the Commission in Order No. 20-392, requires that PacifiCorp "provide additional information on coal supply agreements by providing testimony in the initial TAM filing regarding the

¹ PacifiCorp is not seeking to modify Protective Order No. 23-132 on a permanent basis, but only in Docket No. UE 434 to address the Highly Protected Information necessary in this docket.

prudence of any coal supply agreements that were entered into since the previous year’s reply testimony.”² In order to appropriately respond to these issues, PacifiCorp will need to provide highly sensitive contractual and financial information regarding PacifiCorp’s coal generation resources in the initial TAM filing which will on or about February 14, 2024.

As this is a new proceeding, and parties have yet to intervene, PacifiCorp did not find it necessary to consult with other Parties. Additionally, this same modified protective order was filed and successfully used in PacifiCorp’s 2023 TAM (UE 400) and 2024 TAM (UE 420), and there have been no changes to the processes since then.

II. BACKGROUND

PacifiCorp’s annual TAM filing updates net power costs for the upcoming year and sets the transition adjustment for Oregon customers who choose direct access in the November open enrollment window. The TAM Guidelines include a commitment to make any protective order an ongoing protective order that will continue to be effective in future TAM proceedings.³

In an Order following PacifiCorp’s 2021 TAM, the Commission approved a stipulation that requires PacifiCorp to “provide additional information on coal supply agreements by providing testimony in the initial TAM filing regarding the prudence of any coal supply agreements that were entered into since the previous year’s reply testimony.”⁴

² *In the matter of PacifiCorp, dba Pacific Power, 2021 Transition Adjustment Mechanism*, Docket No. UE 375, Order No. 20-392 (Oct. 30, 2020).

³ *In the matter of PacifiCorp dba Pacific Power, 2010 Transition Adjustment Mechanism*, Docket No. UE 207, Order No. 09-274, TAM Guidelines at A.7 (July 16, 2009).

⁴ *In the matter of PacifiCorp, dba Pacific Power, 2021 Transition Adjustment Mechanism*, Docket No. UE 375, Order No. 20-392 (Oct. 30, 2020).

III. REQUEST FOR ADDITIONAL PROTECTION

ORAR 860-001-0080(3)(a) contains five requirements for seeking a modified protective order. This motion addresses each of these requirements in the following subsections.

A. Exact Nature of the Information Involved (ORAR 860-001-0080(3)(a)(A)).

PacifiCorp will be filing the 2025 TAM on or about February 14, 2024. Since the proceeding has not yet been filed, Parties have not yet intervened in the proceeding.

PacifiCorp's coal inventory policies and procedures, along with information about PacifiCorp's coal supply and transportation agreements, identify PacifiCorp's proprietary strategies for managing its coal supplies at all of its coal-fired generation facilities and include market sensitive information regarding PacifiCorp's coal procurement. Release of this information would put PacifiCorp at a commercial disadvantage when negotiating coal supply agreements and could lead to higher costs that would be passed on to customers. This commercial disadvantage is particularly problematic given the current business climate for coal supply. The Company (and other utilities) have released plans to close certain coal facilities. As a result, the coal supply market is subject to greater scrutiny and the Company's bargaining power is reduced relative to its reduced share of this market.

B. Legal Basis for the Claim the Information is Protected under Oregon Rules of Civil Procedure (ORCP) 36(C)(1) (ORAR 860-001-0080(3)(a)(B)).

ORCP 36(C)(1) provides protection against unrestricted discovery of "trade secrets or other confidential research, development, or commercial information." Certain information that PacifiCorp would like to provide to Commissioners in docket UE 434 and the 2025 TAM constitute "trade secret" information protected under ORCP 36(C)(1) and Oregon's Public Records Laws. Oregon's Uniform Trade Secrets Act, defines a "trade secret" as

information, including cost data, that: (a) derives independent economic value, actual or potential, from not being generally known to the public or to other person who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.⁵ Oregon Public Records law, exempts from disclosure public records that are “trade secrets” that “may include but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or complication of information which in not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.”⁶ In docket LC 77, the 2021 IRP, the Commission entered a modified protective order to cover similar information—highly sensitive contractual and financial information regarding PacifiCorp’s coal generation resources.⁷ Additionally, in docket UE 400, the 2023 TAM, the Commission entered the same type of modified protective order to protect this exact same type of information.⁸ This modified protective order was used in docket UE 420, the 2024 TAM as well.⁹

The information that PacifiCorp has agreed to file is non-public information that is highly proprietary and commercially sensitive. This is true for both the Company’s coal inventory policies and procedures and PacifiCorp’s coal supply and transportation agreements. Public disclosure of the information would harm the Company’s competitive

⁵ ORS 646.461(4).

⁶ ORS 192.345(2).

⁷ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket No. LC 77, Order No. 21-399 (Nov. 5, 2021).

⁸ *In the Matter of PacifiCorp, dba Pacific Power, 2023 Transition Adjustment Mechanism*, Docket No. UE 400, Order No. 22-063 (Feb. 25, 2022).

⁹ *In the Matter of PacifiCorp, dba Pacific Power, 2024 Transition Adjustment Mechanism*, Docket No. UE 420, Order No. 23-120 (Mar. 28, 2023).

position in the negotiation of future coal supply and coal transportation agreements because competitors would gain a competitive advantage through an understanding of PacifiCorp's fueling strategies at all of its coal-fired generation facilities. This harm would ultimately flow through to customers in the form of higher costs and less advantageous terms and conditions of future contracts.

Public disclosure of this information would also harm the competitive position of the Company's suppliers and joint venture parties, and may expose PacifiCorp to claims from those entities for breach of contract. The information requested is specific to issues in the current proceedings and may not be requested by parties in subsequent proceedings.

C. Exact Nature of the Relief Requested (OAR 860-001-0080(3)(a)(C)).

The terms of the Modified Protective Order are narrowly tailored and intended to apply only to PacifiCorp's most sensitive information. The proposed Modified Protective Order will allow the review of Highly Protected Information to qualified parties and recognizes that there is certain Highly Protected Information that parties will share only with their attorneys, with the exception of non-attorneys at Staff and the Oregon Citizens' Utility Board. The Modified Protective Order also sets up a process by which an expert may seek to be qualified to review specific Highly Protected Information. The Commission has entered modified protective orders with virtually identical provisions in the past.¹⁰

Consistent with past Commission decisions, typically Modified Protective Orders required interested parties to review Highly Protected Information at PacifiCorp's offices.¹¹ However, the COVID-19 pandemic and the related limitations on travel and gatherings

¹⁰ *In the Matter of PacifiCorp, dba Pacific Power, 2020 Transmission Adjustment Mechanism*, Docket No. UE 356, Order No. 19-113 (Apr. 3, 2019); *In the Matter of PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, Docket No. UE 374, Order No. 20-131 (Apr. 24, 2020).

¹¹ *See, e.g., Id.*

forced parties to reevaluate these practices, and PacifiCorp provided access to highly confidential documents through a secure cloud-based content management system in view only mode, which would not allow the document to be downloaded or printed. While the COVID-19 pandemic no longer limits travel and in-person meetings, this process will continue. As necessary and reasonable, a party may request copies of limited, specific portions of the Highly Protected Information if needed in the proceeding, and PacifiCorp will provide copies under the terms of the Modified Protective Order.

Like Protected Information, Highly Protected Information may not be used or disclosed for any purpose other than participation in this proceeding. Finally, the Modified Protective Order prohibits electronic copying or distribution of Highly Protected Information.

D. Specific Reasons the Relief Requested is Necessary (OAR 860-001-0080(3)(a)(D)).

Entry of a Modified Protective Order with additional protections will allow PacifiCorp to make the information available to the parties in a manner consistent with the fact that it is highly sensitive commercial information. Granting the requested additional protection also will significantly limit the risk of an inadvertent breach of confidentiality, which could adversely affect PacifiCorp, its joint venture parties, its coal suppliers, its coal transporters, and its customers.

The standard protective order is insufficient because it does not provide adequate safeguards against the disclosure of highly confidential information. Reliance on the Standard Protective Order also would delay discovery and interfere with the expeditious handling of the highly confidential information in this proceeding.

E. Description of the Intermediate Measures Explored by the Parties (OAR 860-001-0080(3)(a)(E)).

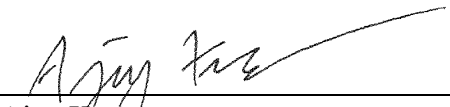
As discussed above, the Commission has requested additional information on PacifiCorp's plans and strategies for managing coal fueling arrangements. Without additional protection, the standard protective order will be insufficient to protect the Company's highly sensitive commercial information. Intermediate measures are not available.

IV. CONCLUSION

For these reasons, PacifiCorp respectfully requests that the Commission issue a Modified Protective Order in the format provided as Appendix A to this Motion for the purposes of docket UE 434, to allow PacifiCorp to provide responsive information to the Commissioners in this case, along with supporting documentation, without unnecessary risk to the Company, its suppliers and joint venture parties.

Respectfully submitted this 8th day of February, 2024.

By:



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APPENDIX A

PROPOSED MODIFIED PROTECTIVE ORDER

MODIFIED PROTECTIVE ORDER

DOCKET NO. UE 434

Scope of this Order:

1. This order supplements the General Protective Order 23-132 in this proceeding and governs the acquisition and use of “Highly Protected Information” produced or used by any party to docket UE 434.

Designation of Protected Information and “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)(1) (a trade secret or other confidential research, development, or commercial information);
 - (b) Is not publicly 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. 24-_____

- 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. For a filing containing Highly Protected Information, a Highly Protected version and a public version of the document must be created and filed with the Filing Center. The Highly Protected versions of documents shall be grouped together and should be clearly marked as Highly Confidential. The Commission’s Filing Center receives files electronically outside of the Huddle program. For discovery containing Highly Protected Information, the file should be uploaded to a Huddle file folder designated “Highly Protected.”
 5. 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.
 6. 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 publicly available or no longer falls within the scope of ORCP 36(C)(1), 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:

7. 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)(1) and that the “Highly Protected Information” designation is necessary.
8. 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.
9. 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 192.311 *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.
10. 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:

11. 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.
12. Persons qualified to access Highly Protected Information upon a party signing the Signatory Page for Highly Protective Information, Appendix B, are:
 - (a) Counsel for the party;
 - (b) 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.

13. A party bound by the General Protective Order No. 23-132 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:

14. 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 13, 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.
15. 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.
16. Access to Highly Protected Information will be provided to Qualified Persons through a secure cloud-based content management system in view only mode, which will not allow the document to be downloaded or printed; however, Qualified Persons will have access to the document and be able to revisit the document at their convenience throughout the proceeding. Qualified persons are not authorized to, and shall not make, screen shots or copies of any document designated as containing Highly Protected Information. Qualified persons reviewing the Highly Protected Information may make limited notes regarding the documents for reference purposes, and for inclusion in a filing consistent with paragraph 4. Such notes shall not constitute a verbatim or substantive transcript of the documents, and shall be considered Highly Protected Information subject to the terms of this protective order. If a limited, specific part of a document containing Highly Confidential Information is necessary for purposes of the proceeding, such as inclusion in comments, the party may request such a copy. In response to such a request, PacifiCorp will prepare a copy of the requested portion of the document and provide it to that party through a secure web portal.

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 and subject to the limitations described in paragraph 16. 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 434

I. Consent to be Bound:

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

Signature: _____

Printed Name: _____

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: _____

III. Persons Seeking Qualification under Paragraph 13:

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:		

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