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March 24, 2023

***VIA ELECTRONIC FILING***

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

**Re: UM 2056—PacifiCorp's Motion for General Protective Order**

PacifiCorp d/b/a Pacific Power hereby submits for filing its Motion for Modified Protective Order.

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**

**UM 2056**

In the Matter of

PACIFICORP, d/b/a PACIFIC POWER's

Oregon Transportation Electrification Plan

**PACIFICORP'S MOTION FOR  
MODIFIED PROTECTIVE ORDER**

**I. INTRODUCTION**

In accordance with OAR 860-001-0420 and OAR 860-001-0080(3), PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) moves the Public Utility Commission of Oregon (Commission) for entry of a Modified Protective Order in this proceeding. This order would provide further safeguards for highly confidential information, consisting of commercially sensitive pricing and cost information and analysis related to PacifiCorp transportation electrification projects. Consistent with OAR 860-001-0080(3), PacifiCorp has conferred with all relevant parties in this matter regarding the present motion on March 23, 2023.

On February 14, 2023, PacifiCorp submitted its Draft 2023 Transportation Electrification Plan (Draft 2023 TEP) in docket UM 2056. After filing the Draft 2023 TEP, the Company has received data requests that may necessitate the disclosure of highly confidential information. This information includes commercially sensitive pricing and cost information and analysis related to transportation electrification projects. If this information were to be improperly disclosed, it could have a detrimental effect on customers by compromising PacifiCorp's ability to successfully negotiate current and future transportation electrification agreements.

To better prevent the improper use or disclosure of highly confidential information, PacifiCorp is requesting that the Commission issue a Modified Protective Order that includes the following narrowly tailored protections:

- Firstly, PacifiCorp requests that individuals involved in current or future PacifiCorp transportation electrification projects as vendors, or individuals who are reasonably expected to be involved in such projects as a vendor, not be granted access to highly confidential information. Restricting access to these individuals will better ensure that vendors will not improperly obtain an unfair competitive advantage by relying on commercially sensitive pricing and cost information and analysis that may be provided in this proceeding.
- Secondly, PacifiCorp request that highly confidential information for all intervenors, except Staff and the Oregon Citizens' Utility Board (CUB), be provided via a secure cloud-based content management system in "review only" mode, which will not permit the downloading or printing of documents. Preventing widespread distribution of highly confidential information makes public disclosure, and the resulting harm, substantially less likely.

Attachment A to this Motion contains PacifiCorp's proposed Modified Protective Order.

## **II. BACKGROUND**

On February 14, 2023, PacifiCorp filed its Draft 2023 TEP. On March 14, 2023, PacifiCorp submitted a Motion for General Protective Order, which was granted on September 16, 2023.<sup>1</sup> The Company has received data requests pertaining to its Draft 2023 TEP that may necessitate the production of highly confidential information. A Modified Protective Order would provide additional protection for commercially sensitive and non-public information throughout the pendency of this docket.

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<sup>1</sup> Order No. 21-300.

### **III. REQUEST FOR ADDITIONAL PROTECTION**

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

**A. Exact Nature of Information Involved (OAR 860-001-0080(3)(a)(A)).**

PacifiCorp has restricted its highly confidential designations to commercially sensitive pricing and cost information and analysis concerning transportation electrification projects. This information constitutes highly sensitive commercial information, and if improperly disclosed, may lead to unfair competitive injury to both the Company and its customers.

**B. Legal Basis for the Claim that Information is Protected under ORCP 36(C)(1) (OAR 860-001-0080(3)(a)(B)).**

ORCP 36(C)(1) provides protections against unrestricted discovery of “trade secrets or other confidential research, development, or commercial information.” Oregon’s Uniform Trade Secrets Act, ORS 646.461 to 646.475, defines “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. The Oregon Public Record Law exempts from disclosure public records that are trade secrets, which “may include but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or complication of information which is not patented, which is known only to commercially sensitive 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.”<sup>2</sup>

The information that PacifiCorp seeks additional protection is non-public, highly proprietary, and commercially sensitive. The Company’s capability to negotiate least-cost, least-risk agreements directly benefits its retail customers. As a result, the revelation of commercially sensitive pricing and cost information and analysis concerning transportation electrification projects may provide vendors with a significant commercial advantage, which could harm the Company and its customers. PacifiCorp will designate commercially sensitive pricing and cost information and analysis regarding transportation electrification projects, as highly confidential and requests reasonable protections for this information, to minimize the risk of prejudicing current or future negotiations.

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

PacifiCorp has proposed two key protections in Attachment A aimed at balancing the interests of intervenors and customers. The recommended protections seek to allow appropriate access to highly confidential information while minimizing the risk of inadvertent or improper use, as well as preventing harm to customers. Specifically, PacifiCorp proposes the following conditions:

- Firstly, PacifiCorp requests that individuals involved in current or future PacifiCorp transportation electrification projects as vendors, or individuals who are reasonably expected to be involved in such projects as a vendor, not be granted access to highly confidential information.
- Secondly, PacifiCorp request that the highly confidential information for all intervenors, except Staff and the Oregon Citizens’ Utility Board (CUB), be provided via a secure cloud-based content management system in “review only” mode, which will not permit the downloading or printing of documents.

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<sup>2</sup> ORS 192.345(2).

These protections are reasonable and in line with other modified protective orders adopted by the Commission.<sup>3</sup>

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

Entry of a Modified Protective Order that includes additional protections will enable PacifiCorp to share information with qualified persons in a manner that aligns with the highly sensitive nature of certain commercial information. Granting the requested protections will effectively minimize the risk of advertent breaches of confidentiality, which could have severe negative consequences for both PacifiCorp and its customers. The General Protective Order is insufficient in this regard as it does not offer adequate measures to prevent the disclosure of highly confidential information.

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

Additional protections, such as those contained in the proposed Modified Protective Order, are necessary when the potential impact of disclosure would be especially severe. The Modified Protective Order also limits the ways in which highly confidential information can be stored, maintained, and transmitted, thereby reducing the risk of unintentional disclosure. These safeguards and restrictions are sensible for the protection of sensitive,

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<sup>3</sup> *In the matter of PacifiCorp dba Application for Approval of Final Draft 2017R Request for Proposals*, Docket No. UM 1845, Order No. 18-080 (Mar. 8, 2018) (adopting a modified protective order to govern access to bid information designated as highly confidential); *In the matter of PacifiCorp d/b/a Pacific Power's 2017 Transition Adjustment Mechanism*, Docket No. UE 307, Ruling (Aug. 25, 2016) (precluding an expert witness's access to RFP results while final agreements were being negotiated because the expert represents competitors); *In the matter of PacifiCorp dba Application for Approval of 2020 All Source Request for Proposals*, Docket No. UM 2059, Order No. 21-202 (June 17, 2021).

non-public, pricing and cost information and analysis that may be disclosed in this proceeding.

#### **IV. CONCLUSION**

For these reasons, PacifiCorp respectfully requests that the Commission approve the issuance of a Modified Protective Order in the format provided in Attachment A to this Motion. The proposed additional protections offered by PacifiCorp are reasonably designed and specifically targeted to reduce the possibility of harm to customers that may arise from the public disclosure of highly sensitive commercial information related to its transportation electrification projects in this proceeding.

Respectfully submitted this 24<sup>th</sup> day of March 2023

A handwritten signature in black ink that reads "Carla Scarsella". The signature is fluid and cursive, with the first name "Carla" and last name "Scarsella" clearly distinguishable.

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Attorney for PacifiCorp

**ATTACHMENT A**

PROPOSED MODIFIED PROTECTIVE ORDER



## **MODIFIED PROTECTIVE ORDER**

DOCKET NO. UM 2056

### **Scope of this Order:**

1. This order supplements General Protective Order No. 23-093 and governs the acquisition and use of “Highly Protected Information” produced or used by any party to docket UM 2056.

### **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)(1) (a trade secret or other confidential research, development, or commercial information);
  - (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. 23-\_\_

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

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 Protected or 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). If a party challenges the “Highly Protected Information” designation, the designating party bears the burden of showing that the “Highly Protected Information” designation is necessary.
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 192.410 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.
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 10 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. Qualified Persons may access Highly Protected Information upon a party signing Appendix B are:
  - (a) An employee or counsel of the Regulatory Division at the Oregon Citizens' Utility Board; and

- (b) Individuals (including attorneys) not involved in current or future PacifiCorp transportation electrification projects as vendors, or individuals who are not reasonably expected to be involved in such projects as a vendor.
13. PacifiCorp will distribute Highly Protected Information to only those persons under paragraph 12(b) using a secure cloud-based content management system in “review only” mode, which will not permit the downloading or printing of documents; 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.

**Objection to Access to Highly 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, 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.
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 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:**

16. 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.

17. 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.
18. 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.
19. 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:**

20. 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.

**I. Persons Qualified to access Highly Protected Information under Paragraph 12**

I have read the Modified Protective Order and agree to 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: \_\_\_\_\_

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Job Title: \_\_\_\_\_