

May 18, 2023

VIA ELECTRONIC FILING

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

Re: UM 2283—PacifiCorp’s Motion for a Modified Protective Order

PacifiCorp d/b/a Pacific Power hereby submits for filing its Motion for Modified Protective Order. PacifiCorp is filing this motion concurrently with its Application for Waiver of Competitive Bidding Rules, which has been pre-assigned docket number UM 2283. A modified protective order is necessary for docket UM 2283 because PacifiCorp’s Application for Waiver of Competitive Bidding Rules contains information designated as highly protected.

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 2283**

In the Matter of
PACIFICORP, d/b/a PACIFIC POWER's
Application for Waiver of Competitive
Bidding Rules

PACIFICORP'S MOTION FOR
MODIFIED PROTECTIVE ORDER

INTRODUCTION

In accordance with OAR 860-001-0420 and OAR 860-001-0080(3), PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) hereby 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, including competitively sensitive resource-specific details and pricing information, internal economic analyses of resources, and data obtained from prior resource procurement processes.¹

Information supporting PacifiCorp's Application for a waiver of the competitive bidding rules contains competitively sensitive resource-specific details and pricing information, internal economic analyses of resources, and data obtained from prior resource procurement processes. Further, discovery in this proceeding may require the Company to respond with such information. This information is considered to be competitively sensitive and confidential commercial information. If disclosed improperly, this information could harm customers by compromising PacifiCorp's ability to negotiate final agreements successfully and could result in less competitive bids in current and future resource

¹ Pursuant to OAR 860-001-0080(F), there are no parties in this docket at the time this motion was filed.

solicitations. Specifically, this information could provide an advantage to receiving developers in tailoring their bids in future procurements. Moreover, the release of project-specific information from previous and ongoing request for proposals (RFP) to competitors would undermine third parties' trust in the integrity of PacifiCorp's RFP process and damage developers whose information was released.

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 (including attorneys) involved in PacifiCorp's ongoing 2022 All Source RFP solicitation process as bidders not be granted access to highly confidential information. Restricting access to these individuals will better ensure that bidders will not improperly obtain an unfair competitive advantage by relying on commercially sensitive details, pricing, and cost information and analysis that may be provided in this proceeding.
- Secondly, PacifiCorp request that the highly confidential information for all intervenors 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 the highly confidential information makes public disclosure, and the attendant harm, substantially less likely.

The Commission has adopted modified protective orders with similar protection in previous dockets.² Attachment A to this Motion contains PacifiCorp's proposed modified protective order.

² *In the matter of PacifiCorp dba Application for Approval of Final Draft 2017R Request for Proposals*, Docket No. UM 1845, Order No. 18-080 (March 8, 2018) (adopting a modified protective order to govern access to bid information designated as highly confidential); *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); *In the matter of PacifiCorp dba Application for Approval of 2022 All Source Request for Proposals*, Docket No. UM 2193, Order No. 23-097 (March 17, 2023).

I. BACKGROUND

Concurrently filed with this motion is an application for a waiver of the competitive bidding rules, that contains highly confidential information. To ensure the protection of this highly sensitive information and to comply with prior Commission direction,³ the Company requests that the Commission enter a modified protective order at the outset of this proceeding.

II. 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 competitively sensitive resource-specific details and pricing information, internal economic analyses of resources, and data obtained from prior resource procurement processes. This information constitutes highly sensitive commercial information, and if improperly disclosed, may lead to unfair competitive injury to the Company, its customers, and third-party bidders from prior resource procurements.

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

³ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket No. LC 77, Order No. 22-128 (April 25, 2022) (“We encourage, and in the future may require, utilities to consider at the outset of a proceeding the extent to which they might need to limit competitors from accessing information and what safeguards they can place on access to allow full participation in the docket to the greatest extent possible. A modified protective order can then be shaped to implement those safeguards.”).

Trade Secrets Act, ORS 646.461 to 464.475, 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 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.”⁴

The information for which 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 competitively sensitive resource-specific details and pricing information, internal economic analyses of resources, and data obtained from prior resource procurement processes may provide developers with a significant commercial advantage, which could harm the Company and its customers. PacifiCorp will designate this competitively sensitive information as highly confidential and requests reasonable protections for this information, to minimize the risk of prejudicing current or future negotiations. Furthermore, the disclosure of highly confidential information may affect the competitiveness of future RFPs as potential bidders may utilize commercially sensitive data from this case to inform their

⁴ ORS 192.345(2).

future bids. Additionally, if bidders lack confidence in the protection of their commercially sensitive bids, they may opt out of participating in future solicitations, decrease competition, and lower the chances of future RFPs yielding the most cost effective and low-risk resources for customers.

PacifiCorp has designated including competitively sensitive resource-specific details and pricing information, internal economic analyses of resources, and data obtained from prior resource procurement processes, as highly confidential and requests reasonable protections for this information, to minimize the risk of prejudicing current or future solicitations and 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 (including attorneys) involved in PacifiCorp's ongoing 2022 All Source RFP solicitation process as bidders not be granted access to highly confidential information.
- Secondly, PacifiCorp request that the highly confidential information for all intervenors be provided via a secure cloud-based content management system in "review only" mode, which will not permit the downloading or printing of documents.

PacifiCorp's first proposed condition aims to prevent anyone involved in the 2022 All Source RFP as a bidders, including attorneys, from accessing highly confidential information. This measure ensures that competitively sensitive, project-specific data is not improperly used by individuals to inform their participation in

future solicitations, which could harm the Company, its customers, and third-party bidders from prior solicitations. This restriction is in line with prior rulings⁵ and conforms to the Commission’s competitive bidding guidelines, which specify that bidding information will not be shared with other bidders.⁶

PacifiCorp’s second proposed condition provides that highly confidential information will only be accessible through a secure cloud-based content management system in “review only” mode, which will prevent parties from downloading or printing of documents. By providing this information via a secure cloud-based content management system, the risk of inadvertently disclosing highly confidential information will be minimized.

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

By entering a Modified Protective Order with the proposed protections, PacifiCorp will be able to share information with qualified parties in a secure manner that aligns with the highly sensitive nature of certain commercial information. Granting the requested protections will effectively minimize the risk of inadvertent breaches of confidentiality, which could have severe negative consequences for PacifiCorp, its customers, and bidders from prior solicitations. The General Protective Order is insufficient in this regard as it does not offer adequate measures to prevent the disclosure of highly confidential information.

⁵ *In the matter of PacifiCorp dba Application for Approval of Final Draft 2017R Request for Proposals*, Docket No. UM 1845, Order No. 18-080 (March 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).

⁶ *In the matter of the Pub. Util. Comm 'n of Or., Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 06-446 at 13-14 (April 30, 2014).

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 competitively sensitive, non-public information and analysis provided in this proceeding.

III. 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 competitively sensitive, project-specific data obtained from prior resource procurement processes.

Respectfully submitted this 18th day of May 2023.



Joseph Dallas OB#230620
Senior Attorney
PacifiCorp
825 NE Multnomah Street
Suite 2000
Portland, OR 97232
Telephone: (360) 560-1937
E-mail: joseph.dallas@pacificorp.com

Attorney for PacifiCorp

ATTACHMENT A

PROPOSED MODIFIED PROTECTIVE ORDER

MODIFIED PROTECTIVE ORDER

DOCKET NO. UM 2283

Scope of this Order:

1. This order supplements General Protective Order No. 23-132 and governs the acquisition and use of “Highly Protected Information” produced or used by any party to docket UM 2283.

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 MODIFIED 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 PacifiCorp’s ongoing 2022 All Source RFP solicitation process as bidders.

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.
14. PacifiCorp will distribute Highly Protected Information to Qualified Persons under paragraph 12 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:

15. All persons qualified to have access to Highly Protected Information will have access to Highly Protected Information unless the designating party objects as provided in this paragraph. As soon as the designating party becomes aware of reasons to restrict access to a Qualified Person, the designating party must provide the Qualified Person and his or her counsel notice stating the basis for the objection. The parties must promptly confer and attempt to resolve the dispute on an informal basis.
16. If the parties are unable to resolve the matter informally, the designating party must file a written objection with the ALJ. The requesting party may file a response to the motion within 5 business days of service of an objection. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of the last filing. Pending the ALJ’s decision, the specific Highly Protected Information may not be disclosed to the person subject to the objection.
17. 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.

Use of Highly Protected Information:

18. 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.
19. 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.
20. 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.
21. 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:

22. 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. UM 2283

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: _____

Address: _____

Employer: _____

Job Title: _____

I. 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: | | |

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