

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

LC 77

In the Matter of

PACIFICORP, d/b/a PACIFIC POWER,

2021 Integrated Resource Plan.

RULING

DISPOSITION: MOTION DENIED

On October 15, 2021, PacifiCorp, dba Pacific Power, filed a motion for a modified protective order (MPO) to provide additional protections for highly confidential, commercially sensitive, non-public information related to PacifiCorp's coal supply agreements and fueling strategy at its coal-fired generation facilities.

PacifiCorp explains that intervenor Sierra Club issued data requests seeking coal supply and transportation agreements and long-term fuel plans (Sierra Club data requests 3.6 and 3.7). PacifiCorp states that it and other utilities are reducing their reliance on coal units. As a result, the coal fuel supply market is becoming smaller, and this reduces PacifiCorp's bargaining power in contract negotiations. PacifiCorp asserts that competitive disadvantage could result from release of the information that is responsive to Sierra Club data requests 3.6 and 3.7 and the harm would ultimately flow through to customers in the form of higher costs.

The MPO requested by PacifiCorp allows for the coal supply and fuel plans to be designated as highly protected information. Access to highly protected information is restricted to Commission employees (including assigned DOJ attorneys), as well as regulatory employees or counsel of the Oregon Citizens' Utility Board and counsel for other parties to the docket who sign the consent to be bound section of Appendix B. The MPO also establishes a process for additional parties to seek access to highly confidential information on a case-by-case basis.

PacifiCorp states the modified protective order would require interested parties to review highly protected information at PacifiCorp's offices or using remote conferencing and screen-sharing programs. As necessary and reasonable, a party may request and PacifiCorp will provide copies of limited, specific portions of the highly protected information for reference or inclusion in hearing or testimony.

The MPO describes electronic filing of highly protected information following the Commission's COVID rules. Highly protected information may not be used or disclosed for any purpose other than participation in this proceeding and may not be

electronically copied or distributed. The MPO would function alongside the existing General Protective Order No. 21-271.

PacifiCorp represents that Sierra Club opposes the motion. PacifiCorp requests expedited consideration.

Resolution

After allowing a similar MPO with screen sharing provisions in docket UE 390, it has become clear that screen sharing is inadequate for reviewing the lengthy and detailed coal supply agreements and PacifiCorp's fuel plans.¹ I deny PacifiCorp's motion and PacifiCorp may propose an alternate arrangement. Two possibilities are that PacifiCorp can place the highly protected information on a secure web portal that a qualified person can access with a password (similar to Huddle). This would allow parties to revisit the documents as they conduct analysis. Parties would still not be allowed to print or reproduce the material.

Another possibility is that PacifiCorp and Sierra Club can agree on which sections of the agreements need to be excerpted so a copy can be provided to Sierra Club. This excerpting and copying is not possible under the proposed MPO language that only applies to testimony or a hearing, which will not occur in an Integrated Resource Plan (IRP) proceeding. PacifiCorp and Sierra Club may have other solutions not described above.

I issue this ruling following the timeline of OAR 860-001-0080(3)(c) that provides in part that AHD will provide expedited review of any motion for modified protective order protective order within 3 business days. PacifiCorp may appeal this ruling to the Commission within 15 days, following OAR 860-001-0110. PacifiCorp may also file an updated MPO. Attached is a copy of the requested MPO with strikeouts shown for the provisions that require rewording.

Dated this 21st day of October, 2021, at Salem, Oregon.



Sarah Rowe
Administrative Law Judge

¹ See *In the Matter of PacifiCorp, dba Pacific Power, 2022 Transition Adjustment Mechanism*, Sierra Club Reply Brief, Docket No. UE 390 (Sep 28, 2021); Staff Reply Brief, Docket No. UE 390 (Sep 28, 2021).

MODIFIED PROTECTIVE ORDER
DOCKET NO. LC 77

Scope of this Order:

1. This order supplements General Protective Order No. 21-271 and governs the acquisition and use of “Highly Protected Information” produced or used by any party to docket LC 77.

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. 21-_____

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. 21-271 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 13-14, 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 only at PacifiCorp's offices. During the COVID-19 pandemic, PacifiCorp will facilitate access to the Highly Protected Information using video conference and screen-sharing technology until such time as all parties determine that it is reasonably safe to review the documents in person. Qualified persons are not authorized to, and shall not make, 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 only. 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. After reviewing the Highly Protected Information at PacifiCorp's offices, if a party reasonably believes that a limited, specific part of a document containing Highly Protected Information is necessary for inclusion in testimony in this proceeding or for use at hearing, the party may request a copy. In response to such a request, PacifiCorp will prepare a copy of the required portion of the document and provide it to that party.

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. 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. 26.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. LC 77

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 1314:

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: | | |

ORDER NO.

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