

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 219

In the Matter of

PACIFICORP, dba PACIFIC POWER

Application to Implement Provisions of  
Senate Bill 76.

**SPECIAL  
PROTECTIVE ORDER**

**DISPOSITION: MOTION FOR SPECIAL PROTECTION GRANTED**

On March 18, 2010, PacifiCorp dba Pacific Power (Pacific Power, PacifiCorp, or Company) filed, with the Public Utility Commission of Oregon (Commission), an Application to Implement the Provisions of Senate Bill (SB) 76 with Advice No. 10-008. SB 76, codified at ORS 757.732 through 757.744, provides for ratemaking associated with the removal of the Klamath River dams pursuant to the Klamath Hydroelectric Settlement Agreement (KHSA).

On March 23, 2010, Pacific Power filed a Motion for Modified Protective Order under ORS 757.736(6), which contemplates the adoption of a protective order in a surcharge ratemaking proceeding related to the KHSA. The motion requests that the Commission enter, on an expedited basis, a Modified Protective Order, with specific changes to the Commission's standard protective order.

On March 29, 2010, the Industrial Customers of Northwest Utilities (ICNU) filed a Response in Opposition to PacifiCorp's Motion for Modified Protective Order. ICNU requests denial of Pacific Power's Motion and adoption of the Standard Protective Order in the proceeding. On April 2, 2010, Pacific Power filed a Motion for Leave to File a Reply and a Reply to ICNU's Response in Opposition.

On April 5, 2010, a prehearing conference was held in this proceeding. Conference participants agreed to discuss issues related to Pacific Power's Motion for a Modified Protective Order with the goal of reaching an information resolution of the matter. A second prehearing conference was scheduled for April 14, 2010, to address whether all issues had been resolved.

On April 14, 2010, another prehearing conference was held. At that conference, Commission Staff, Pacific Power, and all other parties, with the exception of ICNU, indicated that an agreement in principle had been reached on a the form of a modified protective order. Pacific Power represented that the Company would file a newly proposed modified protective order as soon as possible. Should ICNU and Pacific Power continue to disagree at the time of the Company's filing of a newly proposed modified protective order, they jointly agreed to separately file proposed language and ask the Commission to decide the form of a modified protective order to be applied to ICNU.

On April 15, 2010, Pacific Power filed a revised motion for a Modified Protective Order to govern the access to Confidential and Highly Confidential Information for all parties other than ICNU. With the revised motion, Pacific Power stated that it was working on a separate Modified Protective Order to govern ICNU's access to Highly Confidential Information. On April 19, 2010, Special Protective Order No. 10-148, that approved the Modified Protective Order, was entered.

On April 20, 2010, Pacific Power filed a motion for a second Modified Protective Order to govern the access to Confidential and Highly Confidential Information for ICNU only (ICNU Modified Protective Order). Pacific Power indicated that ICNU had authorized the Company to represent that ICNU does not object to the form of the ICNU Modified Protective Order.

**Ruling**


Pacific Power's motion for approval of the ICNU Modified Protective Order is granted.

**ORDER**

IT IS ORDERED that the Modified Protective Order for the Industrial Customers of Northwest Utilities, attached as Appendix A, shall govern the disclosure of Confidential and Highly Confidential information for the designated party.

Made, entered, and effective on April 21, 2010.



  
Traci A. G. Kirkpatrick  
Administrative Law Judge

A party may appeal this order to the Commission pursuant to OAR 860-014-0091.

MODIFIED PROTECTIVE ORDER  
DOCKET NO. UE 219

**Scope of this Order-**

1. This order governs the acquisition and use of “Confidential Information” and “Highly Confidential Information” by the Industrial Customers of Northwest Utilities (“ICNU”) in this proceeding. For purposes of this Modified Protective Order, “party” or “parties” refers to either PacifiCorp or ICNU or both.

**Definitions-**

2. “Confidential Information” is information that falls within the scope of ORCP 36(C)(7) (“a trade secret or other confidential research, development, or commercial information”). “PacifiCorp’s Primary Economic Analysis” as defined in the Klamath Hydroelectric Settlement Agreement in Section 1.4 and summarized in Confidential Exhibit PPL/202 will be designated as Confidential, not Highly Confidential.

3. “Highly Confidential Information” may include documents required to be filed pursuant to ORS 757.736(1) and in addition may include analyses or studies, above and beyond those required to be filed pursuant to ORS 757.736(1), developed by PacifiCorp that fall within the scope of ORCP 36(C)(7) (“a trade secret or other confidential research, development, or commercial information”) and which could be used to the detriment of PacifiCorp’s customers in relicensing proceedings for the Klamath River Hydroelectric Project (“Project”) (currently Docket No. P 2082 027). Nothing in this paragraph impacts ICNU’s rights under Paragraph 19 below.

4. With respect to Confidential Information, a “qualified person” is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. Counsel of record for ICNU;
- c. A person employed directly by counsel of record for ICNU; or
- d. A person qualified on behalf of ICNU pursuant to paragraph 14. This includes ICNU and its consultants.

5. With respect to Highly Confidential Information, a “qualified person” is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;

- b. Counsel of record for ICNU, a person employed directly by counsel of record, or a consultant hired by counsel of record, or persons eligible to be qualified on behalf of ICNU pursuant to paragraph 14.

However, for an individual that has signed the Highly Confidential Protective Order, he or she must not represent a party other than ICNU in the FERC relicensing proceeding. If another individual in the same law firm or consulting firm represents or may represent a party other than ICNU in the FERC relicensing proceeding, then a screen that meets the requirements of the Oregon Rules of Professional Conduct shall be established within the law firm or consulting firm. The screen shall operate to prevent the same individual that represents ICNU from participating in a FERC relicensing proceeding on behalf of a different party, and to prevent sharing of Highly Confidential Information with members of the individual's organization who are not qualified to view Highly Confidential Information. This process of establishing a screen only applies if an individual associated with the law firm or consulting firm representing ICNU signs the Highly Confidential Protective Order.

**Designation of Confidential Information-**

6. A party providing Confidential Information shall inform the other party that the material has been designated confidential by placing the following legend on the information:

CONFIDENTIAL  
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party shall designate as confidential only those portions of the document that fall within ORCP 36(C)(7).

7. PacifiCorp or ICNU may designate as confidential any information previously provided by giving written notice to the other party. The party in possession of newly designated Confidential Information shall, when feasible, ensure that all copies of the information bear the above legend to the extent requested by the party desiring confidentiality.

**Designation of Highly Confidential Information-**

8. PacifiCorp or ICNU shall designate Highly Confidential Information by placing the following legend on the information:

HIGHLY CONFIDENTIAL  
SUBJECT TO MODIFIED PROTECTIVE ORDER

**Information Given to the Commission-**

9. 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 yellow paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. 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 CONFIDENTIAL INFORMATION. THE INFORMATION MAY BE SHOWN ONLY TO QUALIFIED PERSONS AS DEFINED IN THE ORDER.

10. 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. PacifiCorp will Bates number all documents that are designated as Highly Confidential so that a party may reference any page it wants to use as an exhibit to testimony. PacifiCorp will file a copy of the documents with the Commission's Administrative Hearings Division. An original and five copies, each separately sealed, shall be provided to the Commission. 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.

11. The Commission's Administrative Hearings Division shall store the Confidential Information and Highly Confidential Information in a locked cabinet dedicated to the storage of Confidential Information and Highly Confidential Information.

**Disclosure of Confidential Information or Highly Confidential Information-**

12. Confidential Information. ICNU shall sign the Consent to be Bound Form attached as Appendix B in order to receive Confidential Information. Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 4. When feasible, Confidential Information shall be delivered to counsel. In the alternative, 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 Administrative Law Judge.

Highly Confidential Information. ICNU shall sign the Consent to be Bound Form attached as Appendix C in order to receive Highly Confidential Information. Highly Confidential Information shall not be disclosed to any person other than a “qualified person,” as defined in paragraph 5. Highly Confidential Information shall be delivered only to persons qualified pursuant to subsections 5(a)-(c).

13. Qualified persons may disclose Confidential Information to any other qualified person, unless the party desiring confidentiality protests as provided in Section 15. Consistent with Sections 5 and 12, qualified persons may disclose Highly Confidential Information only to other persons qualified to view Highly Confidential Information, unless the party desiring confidentiality protests as provided in Section 15.

14. To become a qualified person under paragraph 4(e) or 5(c), a person must:
- a. Read a copy of this Modified Protective Order;
  - b. Execute the Consent to be Bound Form relevant to Confidential Information or Highly Confidential Information, as applicable;
  - c. Date the statement;
  - d. Provide a name, address, employer, and job title; and
  - e. If the person is a consultant or advisor for ICNU, 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 shall deliver a copy of the signed statement including the information in (d) and (e) above to PacifiCorp and to all parties of record. Such notification may be made via e-mail or facsimile. A person qualified under paragraph 4(d) shall not have access to Confidential Information sooner than five (5) business days after receipt of a copy of the signed statement including the information in (d) and (e) above by PacifiCorp.

15. All qualified persons shall be provided Confidential Information, unless PacifiCorp protests as provided in this paragraph. The qualified persons who have signed the Consent to be Bound relevant to Highly Confidential Information shall be provided Highly Confidential Information, unless PacifiCorp protests as provided in this paragraph. PacifiCorp must provide written notice to the qualified person(s) and counsel for ICNU as soon as PacifiCorp becomes aware of reasons to restrict access. The parties must promptly confer and attempt to resolve any dispute over access to Confidential Information or Highly Confidential Information on an informal basis before filing a motion with the Administrative Law Judge. If the dispute cannot be resolved informally, either party may file a motion with the Administrative Law Judge for resolution. Either party may also file a motion if the other party does not respond within five days to a request to resolve the dispute. A motion must describe in detail the intermediate measures, including selected redaction, explored by the parties and explain why such measures do not resolve the dispute. After receipt of the written notice as required in this paragraph, the specific Confidential Information or Highly Confidential Information shall not be disclosed to the qualified person(s) until the issue is resolved.

**Preservation of Confidentiality-**

16. All persons who are given access to Confidential Information or Highly Confidential Information by reason of this order shall not use or disclose the Confidential Information or Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the Confidential Information secure. Disclosure of Confidential Information or 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. However, ICNU is not restricted in its ability to utilize Highly Confidential Information in preparing and submitting its testimony and evidence before the OPUC in this docket, consistent with the requirements of this Modified Protective Order.

**Duration of Protection-**

17. The Commission shall preserve the confidentiality of Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall 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 Confidential Information or Highly Confidential Information.

**Destruction After Proceeding-**

18. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Confidential Information or 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 Confidential Information or Highly Confidential Information or documents containing such Confidential Information or Highly Confidential Information must destroy or return it to PacifiCorp within 90 days after final resolution of this proceeding unless PacifiCorp consents, in writing, to retention of the Confidential Information or Highly Confidential Information or documents containing such Confidential Information or Highly Confidential Information.

**Appeal to the Presiding Officer-**

19. If a party disagrees with the designation of information as confidential or highly confidential, the party shall contact the designating party and attempt to resolve the dispute on an informal basis. If the parties are unable to resolve the dispute, the party desiring to use the information may move for exclusion of the information from the protection conferred by this order. The motion shall:

- a. Specifically identify the contested information; and
- b. Assert that the information does not fall within ORCP 36(C)(7) and state the reasons therefore.

The party resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the party resisting disclosure does not respond to the motion within ten (10) calendar days, the challenged information shall be removed from the protection of this order.

The information shall not be disclosed pending a ruling by the Administrative Law Judge on the motion.

**Additional Protection-**

20. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested;
- d. The specific reasons the requested relief is necessary; and
- e. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if released, shall not be disclosed pending the Commission's ruling on the motion.



**SIGNATORY PAGE**

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**I. Consent to be Bound- Confidential Information.**

This Modified Protective Order governs the use of "Confidential Information" in this proceeding.

\_\_\_\_\_The Industrial Customers of Northwest Utilities agrees to be bound by its terms of this Modified Protective Order.

By: \_\_\_\_\_  
Signature & Printed Date

**II. Persons Qualified pursuant to Paragraphs 4(a) through 4(d).**

The Industrial Customers of Northwest Utilities identifies the following person(s) automatically qualified under paragraph 4(a) through (d).

_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date

**SIGNATORY PAGE**

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**III. Persons Qualified pursuant to Paragraph 4(d) and Paragraph 14.**

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 14.

By:	_____	_____
	Signature & Printed	Date
	_____	
By:	_____	_____
	Signature & Printed	Date
	_____	
By:	_____	_____
	Signature & Printed	Date
	_____	
By:	_____	_____
	Signature & Printed	Date
	_____	

**SIGNATORY PAGE**

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**IV. Consent to be Bound for Highly Confidential Information.**

This Modified Protective Order governs the use of "Highly Confidential Information" in this proceeding.

\_\_\_\_\_ The Industrial Customers of Northwest Utilities agrees to be bound by its terms of this Modified Protective Order.

By: \_\_\_\_\_  
Signature & Printed Date

**V. Persons Qualified pursuant to Paragraph 5(c).**

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 14.

By: \_\_\_\_\_  
Signature & Printed Date

By: \_\_\_\_\_  
Signature & Printed Date

By: \_\_\_\_\_  
Signature & Printed Date