

ORDER NO. 11 265

ENTERED: JUL 19 2011

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 227

In the Matter of

PACIFICORP, dba PACIFIC POWER

2012 Transition Adjustment Mechanism.

**(SUPERSEDING)  
MODIFIED  
PROTECTIVE  
ORDER**

**DISPOSITION: MOTION FOR PROTECTIVE ORDER GRANTED IN  
PART**

On June 27, 2011, PacifiCorp, dba Pacific Power filed a motion for modified protective order. Pacific Power asserts that certain information relevant to this docket—specifically, information related to the company's official forward price curve—is extremely sensitive and warrants more protection than is offered by the Commission's general protective order. Pacific Power asks the Commission to modify the general protective order currently in effect to provide heightened protections for certain information. Pacific Power asks that its proposed protective order be adopted for use in this and future transition adjustment mechanism (TAM) dockets.

Pacific Power explains that Commission Staff, the Industrial Customers of Northwest Utilities (ICNU), and the Citizens' Utility Board of Oregon (CUB) all support the adoption of Pacific Power's modified protective order. Although these parties support the adoption of the proposed protective order, they take no position regarding whether any particular piece of information should be treated as highly confidential. They also reserve the right to challenge paragraph 15 of Pacific Power's proposed protective order, requiring destruction of documents after a docket is closed.

The time for objections to Pacific Power's motion has passed, and no objection has been filed. Because there has been no objection to Pacific Power's motion, the modified protective order is adopted in these proceedings, with one modification: The proposed protective order is adopted for use only in these proceedings. The need for supplemental protections in future TAM dockets will be addressed on a case-by-case basis, governed by the standards set forth in the Commission's procedural rules.

The Commission makes no findings about whether any particular document should be treated as highly confidential. Staff, ICNU, and CUB retain the right to challenge paragraph 15 of the modified protective order.

To receive information under the modified protective order, all parties except Commission Staff must sign and complete the signatory page and thereby consent to be bound. This includes those parties that moved for issuance of the modified protective

order. By signing the "consent to be bound," a party agrees to be bound by the terms of the modified protective order and certifies that it has an interest in the proceedings that is not adequately represented by other parties to the proceedings.

All persons given access to confidential information must monitor their own conduct to ensure compliance with the modified protective order. Without the written permission of the designating party, no person may use or disclose the information for any purpose other than participating in these proceedings. All qualified persons must take reasonable precautions to keep confidential information secure. Questions regarding whether a particular person is a "qualified person" under the modified protective order may be directed to the Administrative Hearings Division at (503) 378-6678.

### ORDER

IT IS ORDERED that the protective order attached as Appendix A is adopted for use in these proceedings, as modified by this order. Appendix A supplements the general protective order currently in effect in this docket.

Made, entered, and effective on July 19, 2011.



A handwritten signature in black ink, appearing to read "Lisa D. Hardie", is written over a horizontal line.

Lisa D. Hardie  
Administrative Law Judge

A party may appeal this order to the Commission under OAR 860-001-0420.

MODIFIED PROTECTIVE ORDER  
DOCKET NO. UE 227

**Scope of this Order-**

1. This order governs the acquisition and use of "Highly Confidential Information".

**Definitions-**

2. "Highly Confidential Information" consists of commercially sensitive information that falls within the scope of ORCP 36(C)(7) ("a trade secret or other confidential research, development, or commercial information"); the public disclosure of which or disclosure to competitors of PacifiCorp would harm the Company's competitive position in the market place, resulting in harm to customers.

3. With respect to Highly Confidential Information, a "Qualified Person" is an individual who is:

- a. An author, addressee, or originator of Highly Confidential Information;
- b. A Commissioner, Administrative Law Judge (ALJ), Commission staff, or counsel for Commission Staff; or
- c. Counsel of record for, a person directly employed by counsel of record for, employee of, or consultant or advisor for parties that are pre-certified to receive funding pursuant to OAR 860-001-0120.

**Designation of Highly Confidential Information-**

4. A party providing Highly Confidential Information must inform other parties that the material has been designated Highly Confidential by placing the following legend on the material:

HIGHLY CONFIDENTIAL INFORMATION  
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party may designate as Highly Confidential only the portions of the material covered by this order.

5. A party may designate as Highly Confidential any information previously provided by giving written notice to the other parties. Parties in possession of newly designated Highly Confidential Information must, when feasible, ensure that all copies of the information bear the above legend if requested by the designating party.

6. Any other party may challenge the designation of information as Highly Confidential by notifying the designating party. Once notified, the designating party bears the burden of showing that the challenged information is covered by this order.

**Information Given to the Commission-**

7. 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. 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.

8. The Commission's Administrative Hearings Division shall store the Highly Confidential Information in a locked cabinet dedicated to the storage of Highly Confidential Information. CUB shall store hard copy paper and CD ROM Highly Confidential Information in a locked room dedicated for use by the Regulatory Program and the storage of Highly Confidential information.

**Disclosure of Highly Confidential Information-**

9. To receive Highly Confidential Information, all parties except Commission Staff must sign the "consent to be bound" attached as Appendix A. Highly Confidential Information may not be disclosed to any person other than a Qualified Person. When feasible, Highly Confidential Information must be delivered to counsel. In the alternative, Highly 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 ALJ.

10. A Qualified Person may disclose Highly Confidential Information to any other Qualified Person associated with the same party, unless the designating party protests as provided in paragraph 12.

11. To become a Qualified Person under paragraph 3, a person must:

- a. Read a copy of this Modified Protective Order;
- b. Execute the Consent to be Bound Form relevant to Highly Confidential Information;
- c. Date the statement;
- d. Provide a name, address, employer, and job title; and
- e. If the person is a consultant or advisor for a party, 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 must deliver a copy of the signed statement including the information in (d) and (e) above to the designating party and to all parties of record. Such notification may be made via e-mail or facsimile. A person qualified under paragraph 3(c) may not have access to Highly Confidential Information sooner than seven days after the designating party receives a copy of the signed statement.

12. All Qualified Persons may have access to Highly Confidential Information, unless the designating party objects as provided in this paragraph. The designating party must provide written notice to the Qualified Person and counsel for the party associated with the Qualified Person as soon as the designating party becomes aware of reasons to restrict access. The parties must promptly confer and attempt to resolve any dispute over access to Highly Confidential Information on an informal basis before filing a motion with the ALJ. After receipt of the written notice as required in this paragraph, the specific Highly Confidential Information may not be disclosed to the Qualified Person until the issue is resolved.

#### **Preservation of Confidentiality-**

13. Without the written permission of the designating party, any person given access to Highly Confidential Information under this order may not use or disclose Highly Confidential Information for any purpose other than participating in these proceedings. All Qualified Persons must take reasonable precautions to keep Highly Confidential Information secure. Disclosure of 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 (except as necessary to reference the information in confidential testimony, legal memoranda, cross-examination exhibits, or in a pleading) or seek to use such Highly Confidential Information in any other proceeding without permission of the designating party. A Qualified Person may disclose Highly Confidential Information only to other Qualified Persons associated with the same party.

When providing Highly Confidential Information to Qualified Persons, the designating party may request additional protections or restrictions regarding the Highly Confidential Information. If the parties cannot resolve any dispute regarding the handling of the Highly Confidential Information, the dispute shall be resolved pursuant to Sections 12, 16 and 17 of this Modified Protective Order.

#### **Duration of Protection-**

14. The Commission will 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 Highly Confidential Information.

**Destruction After Proceeding-**

15. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents 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 Highly Confidential Information or documents containing such Highly Confidential Information must destroy or return it to the designating party within 90 days after final resolution of this proceeding unless the designating party consents in writing to retention of the Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

**Appeal to the Presiding Officer-**

16. Any party may request that the ALJ conduct a conference to help resolve disputes related to this protective order.

A party challenging the designation of information as Highly Confidential may file an objection with the ALJ that identifies the information in dispute and includes a certification that reasonable efforts to achieve an informal resolution have been unsuccessful. Within seven days of the objection, unless otherwise ordered by the ALJ, the designating party must either remove the Highly Confidential designation or file a written response identifying the legal basis for the claim of high confidentiality. The challenging party may file a written reply to any response within seven days. If the designating party does not timely respond to the motion, the Commission will remove the Highly Confidential designation from the challenged information.

**Additional Protection-**

17. This order does not limit the ability of PacifiCorp to propose additional protections or special handling procedures for material that PacifiCorp believes will not be adequately protected from disclosure under the terms of the Highly Confidential protective order. Neither does it limit the ability of parties to object to any such request.

If a designating party seeks additional protection for Highly Confidential Information, the party may move for any of the remedies in ORCP 36(C). The motion must include:

- a. The parties involved;
- b. The exact nature of the information involved;
- c. The legal basis for the claim that the information is protected under ORCP 36(C)(7) or the Public Records Law;
- d. The exact nature of the relief requested;
- e. The specific reasons the requested relief is necessary; and
- f. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why these measures are insufficient.

Pending the Commission's ruling on a motion for additional protection, the information involved need not be released.





**II. Consent to be Bound-**

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

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 11.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_