

ORDER NO. 16 128

ENTERED MAR 28 2016

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 307

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2017 Transition Adjustment Mechanism.

PROTECTIVE  
ORDER

**DISPOSITION: MOTION FOR PROTECTIVE ORDER GRANTED**

On March 25, 2016, PacifiCorp, dba Pacific Power, filed a motion for a general protective order to be effective in its 2017 Transition Adjustment Mechanism (TAM) proceeding and all future TAM dockets. Pacific Power filed the request as the first pleading in its current TAM proceeding and seeks expedited consideration so that the protective order will be in place and effective when the company makes its 2017 TAM filing on April 1, 2016. This will enable the parties to promptly gain access to confidential information and expedite the discovery process.

The company asserts that it anticipates parties to this docket may request proprietary cost data and models, commercially sensitive load and resource projections, confidential market analyses and business projections and confidential information regarding contracts for the purchase or sale of electric power, power services or fuel. Pacific Power contends that unrestricted disclosure of such information could expose the company to competitive injury.

PacifiCorp notes that, while its need for a protective order has not changed subsequent to its most recent prior TAM proceeding, the Commission modified the language of the general protective order by Order No. 15-243 entered August 25, 2015. Accordingly, the company has requested that, in this and future TAM proceedings, the Commission issue protective orders using the current language.

The Commission has previously found good cause to issue protective orders in TAM proceedings,<sup>1</sup> and I find that good cause also exists in this proceeding to issue a general protective order, attached as Appendix A, that will govern access to information designated as confidential in this and all future TAM proceedings.

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<sup>1</sup> See *In the Matter of PacifiCorp, dba Pacific Power 2011 Transition Adjustment Mechanism*, Docket No. UE 216, Order No. 10-069 (Feb 25, 2010).

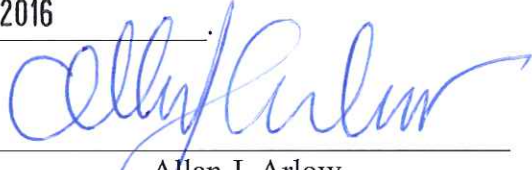
A party may appeal this order to the Commission under OAR 860-001-0110.

**ORDER**

IT IS ORDERED that the general protective order, attached as Appendix A, is adopted.

Made, entered, and effective on MAR 28 2016.



  
\_\_\_\_\_  
Allan J. Arlow  
Administrative Law Judge

**GENERAL PROTECTIVE ORDER**  
DOCKET NO. UE 307

**Scope of this Order:**

1. This order governs the acquisition and use of Protected Information produced or used by any party in docket UE 307, and all future proceedings to review PacifiCorp's Transition Adjustment Mechanism filed pursuant to Order No. 05-1050.

**Designation of Protected Information:**

2. Any party may designate as Protected Information any information the party reasonably determines:

- (a) Falls within the scope of ORCP 36(C)(7) (a trade secret or other confidential research, development, or commercial information); and
- (b) Is not publically available.

3. To designate information as Protected Information, a party must place the following legend on the material:

PROTECTED INFORMATION  
SUBJECT TO GENERAL PROTECTIVE ORDER

The party should make reasonable efforts to designate as Protected Information only the portions of the information covered by ORCP 36(C)(7).

4. Each page of a document containing Protected Information filed with the Commission or provided to Qualified Persons under this order must be printed on yellow paper and placed in a sealed envelope or other appropriate container. *Only the portions of a document that fall within ORCP 36(C)(7) may be placed in the envelope/container.* The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. \_\_\_\_\_  
AND CONTAINS PROTECTED INFORMATION. THE  
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED  
PERSONS AS DEFINED IN THE ORDER.

5. A party may designate as Protected Information any information previously provided by giving written notice to the Commission and other parties. Parties in possession of newly designated 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 Protected Information continues to warrant protection under this order. If

designated information becomes publically available or no longer falls within the scope of ORCP 36(C)(7), 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:**

7. A party may informally challenge any designation of 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)(7). Any party may request that the ALJ hold a conference to help resolve disputes about proper designation.

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 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 Protected Information:**

11. Only Qualified Persons may access Protected Information designated by another party under this Protective Order. Persons automatically bound by this protective order and qualified to access Protected Information are:

- a. Commission employees; and
- b. Assistant Attorneys General assigned to represent the Commission.

12. Persons qualified upon a party signing the Consent to be Bound section of Appendix B are:

- a. Counsel for the party;
- b. Any person employed directly by counsel of record; and
- c. An employee of the Regulatory Division at the Citizens' Utility Board of Oregon.

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 protective order may seek to qualify other persons to access Protected Information by having those persons complete and sign Appendix C, and submitting that information to the Commission and all parties. Within five business days of receiving a copy of Appendix C, the designating party must either provide the requested access to Protected Information or file an objection under Paragraph 14.

**Objection to Access to Protected Information:**

14. All Qualified Persons have access to 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 Protected Information may not be disclosed to the person subject to the objection.

**Use of Protected Information:**

16. All Qualified Persons must take reasonable precautions to keep Protected Information secure. A Qualified Person may reproduce Protected Information to the extent necessary to participate in these proceedings. A Qualified Person may discuss 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 Qualified Person given access to Protected Information under this order may not disclose 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 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. The information retained may only be disclosed to

Qualified Persons under this order. Any other person retaining 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 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 protected for a period of five years from the date of the final order in each docketed proceeding, 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 Protected Information.

**CONSENT TO BE BOUND**  
DOCKET NO. UE 307

**I. Consent to be Bound:**

This general protective order governs the use of Protected Information docket in UE 307, and all future proceedings to review PacifiCorp's Transition Adjustment Mechanism filed pursuant to Order No. 05-1050.

\_\_\_\_\_ (Party) agrees to be bound by the terms of the general protective order and certifies that it has an interest in these proceedings that is not adequately represented by other parties to the proceedings.

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

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

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

**II. Persons Qualified under Paragraph 12:**

\_\_\_\_\_ (Party) identifies the following person(s) qualified under paragraph 12.

PRINTED NAME	DATE

**QUALIFICATION OF OTHER PERSONS**  
DOCKET NO. UE 307

**III. Persons Seeking Qualification under Paragraph 13:**

I have read the general protective order, agree to be bound by the terms of the order, and provide the following information.

<b>Signature:</b>		<b>Date:</b>
<b>Printed Name:</b>		
<b>Physical Address:</b>		
<b>Email Address:</b>		
<b>Employer:</b>		
<b>Associated Party:</b>		
<b>Job Title:</b>		
<b>If not employee of party, description of practice and clients:</b>		