

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 374

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Request for a General Rate Revision.

MODIFIED PROTECTIVE ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On February 11, 2020, I issued a general protective order, Order No. 20-040, to govern the acquisition and use of protected information produced or used in these proceedings. On April 21, 2020, PacifiCorp d/b/a Pacific Power filed a motion for a modified protective order to provide additional protections for information sought by Sierra Club in discovery that PacifiCorp regards as highly confidential.

PacifiCorp's motion includes the elements required by OAR 860-001-0080(3)(a)(A)-(E) and provides a draft of the requested protective order as required by OAR 860-001-0080(3)(a)(G).¹ PacifiCorp describes the information it intends to designate as highly protected as co-ownership contracts for coal facilities, an engineering, procurement, and construction agreement, and highly sensitive financial analysis. PacifiCorp states that release of this information would put PacifiCorp at a commercial disadvantage in its ownership and operation of its coal generation resources and violate third-party confidentiality provisions covering many of the documents.

PacifiCorp describes how it seeks to limit access to highly protected information. Under PacifiCorp's requested modified protective order, access to highly protected information will be provided only at PacifiCorp's office, but that due to the ongoing COVID-19 pandemic, PacifiCorp will facilitate review using remote conferencing and screen sharing programs. The modified protective order provides that a party may request copies of limited, specific portions of highly confidential information for reference or inclusion in testimony. PacifiCorp's requested modified protective order also requires that highly protected information be labeled as such and printed on green paper, or placed in a "Highly Protected" folder in Huddle. PacifiCorp asserts that the purpose of the proposed protections is to limit the duplication and transmission of highly

¹ OAR 860-001-0080(3)(a)(F) requires that a motion for a modified protective order include "a certification that the requesting party conferred with the other parties regarding the request for a modified protective order indicating whether the parties support the motion." PacifiCorp's motion indicates that the company has conferred with Sierra Club regarding this request, and Sierra Club does not object, but PacifiCorp's motion does not address whether the company conferred with the other parties to this proceeding.

confidential information, and ensure that parties receiving such information treat it with the utmost care.

PacifiCorp also describes the different persons that will be eligible to access highly protected information. Commission employees and counsel for Commission Staff are automatically eligible. Counsel for a party and the regulatory staff of the Oregon Citizens' Utility Board are eligible upon signing and submitting Appendix B. A party may seek to qualify other persons by having those persons complete Appendix C and submitting the signatory pages.

I conclude that PacifiCorp has established a legal basis for additional protection under OAR 860-001-0080(3)(a) and issue the attached modified protective order to govern access to information that requires additional protection beyond that of the general protective order and is designated as "Highly Protected Information." PacifiCorp is responsible for ensuring that only information that is extremely sensitive is designated as highly confidential and afforded these additional protections. The general protective order issued February 20, 2020, Order No. 20-040 will continue to govern access to "Protected Information."

PacifiCorp requests expedited entry of the modified protective order to facilitate prompt response to pending discovery from Sierra Club. As provided in OAR 860-001-0080(3)(c), I adopt the Modified Protective Order on an expedited basis. Under OAR 860-001-0080(3)(d), any responses to PacifiCorp's motion are due within 15 days of filing of the motion. In the event any party files a response, I will conduct a *de novo* review of the terms of the modified protective order.²

Made, entered, and effective Apr 24, 2020.



A handwritten signature in blue ink, appearing to read "Alison Lackey".

Alison Lackey
Administrative Law Judge

² OAR 860-001-0080(3)(e).

MODIFIED PROTECTIVE ORDER
Docket No. UE 374

Scope of this Order:

1. This order governs the acquisition and use of “Highly Protected Information” produced or used by any party to these proceedings. General Protective Order No. 20-040 governs the acquisition and use of “Protected Information.”

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); and
- (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 GENERAL PROTECTIVE ORDER NO. 20-__

The party should make reasonable efforts to designate as Highly Protected Information only the portions of the information covered by the definition in Paragraph 2 of this order.

4. Each page of a document containing Highly Protected Information filed with the Commission or provided to Qualified Persons under this order must be printed on green paper and placed in a sealed envelope or other appropriate container. Only the portions of a document that fall within the above definitions may be placed in the envelope/container. The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. 20-__ AND CONTAINS HIGHLY PROTECTED INFORMATION. THE INFORMATION MAY BE SHOWN ONLY TO PERSONS QUALIFIED TO ACCESS HIGHLY PROTECTED INFORMATION AS DEFINED IN THE ORDER.

5. Highly Protected Information disclosed by a designating party to a person qualified to access Highly Protected information through informal discovery or by means of the Commission's Huddle website will be marked “Highly Protected Information” and uploaded to a file folder designated “highly protected” in Huddle, if applicable.

6. 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.

7. 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:

8. 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 bears the burden of showing that the “Highly Protected Information” designation is necessary. Any party may request that the ALJ hold a conference to help resolve disputes about proper designation.

9. 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.

10. 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.

11. 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:

12. 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.

13. Persons qualified to access Highly Protected Information upon signing the Signatory Page for Highly Protected Information, Appendix B, are:

- (a) An employee or counsel of the Regulatory Division at the Oregon Citizens' Utility Board; and
- (b) Counsel for a party.

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.

14. A party bound by the General Protective Order No. 20-040 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 16.

15. 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.

Objection to Access to Highly Protected Information:

16. 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.

17. 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.

Use of Highly Protected Information:

18. All Qualified Persons must take reasonable precautions to keep Highly Protected Information secure. Qualified Persons may request copies of Highly Protected Information in accordance with paragraph 15 of this order 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.

APPENDIX B

**Signatory Page for Highly Protected Information
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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 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: _____

APPENDIX C
QUALIFICATION OF OTHER PERSONS UNDER MODIFIED PROTECTIVE ORDER
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Persons Seeking Qualification under Paragraph 14 to access Highly Protected Information:

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 Protected Information.

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