

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2059

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of 2020 All  
Source Request for Proposals.

MODIFIED  
PROTECTIVE  
ORDER

**DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED**

On June 15, 2021, PacifiCorp, dba Pacific Power, filed a motion for a modified protective order to provide additional protections for bid information, bid analysis, and modeling based on the bid information in the 2020 All Source Request for Proposals (2020 AS RFP). PacifiCorp explains that it is currently negotiating agreements with bidders in the 2020 AS RFP and that the bid information is highly sensitive, non-public commercial information. PacifiCorp seeks additional protection for bid information because disclosure could impact its ability to negotiate least-cost final agreements.

The modified protective order requested by PacifiCorp allows for bid information and analysis to be designated as highly protected information. Access to highly protected information is restricted to qualified persons, with different level of access for different parties. First, Commission employees (including assigned DOJ attorneys) and employees or counsel of the Oregon Citizens' Utility Board have full access to the highly protected information. Second, parties and persons that are not involved in PacifiCorp's 2020 AS RFP as bidders may sign the signatory page and have access to the information via video-conference and screen sharing technology, until such time as all parties determine it is reasonably safe to review the documents in person at PacifiCorp's offices. Third, persons involved in the RFP as bidders or persons who represent or advise bidders are not eligible to access the highly protected information.

I find that good cause exists to issue the modified protective order, which is attached as Appendix A. The modified protective order will function alongside the existing General Protective Order No. 20-077. The intent of the modified protective order is to prevent PacifiCorp's counter-parties or potential counter-parties from accessing bid

information and injuring PacifiCorp's competitive position, while also allowing non-bidders access to the information following specific procedures.

PacifiCorp did not include the OAR 860-001-0080(3)(a)(F) certification that it conferred with the other parties and whether the parties support the motion. If a party has concerns with the terms of this modified protective order, a response to PacifiCorp's motion may be filed by June 30, 2021 (within 15 days of the filing of the motion) as described in OAR 860-001-0080(3)(d), and I will conduct a *de novo* review as described in OAR 860-001-0080(3)(e). After June 30, 2021, a party may appeal this order to the Commission under OAR 860-001-0720. To challenge PacifiCorp's designation of information as highly protected, a party may follow the process in the modified protective order.

**ORDER**

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

Made, entered, and effective on Jun 17, 2021



Sarah Rowe  
Administrative Law Judge



**MODIFIED PROTECTIVE ORDER**

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**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. 20-077 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. 21 - \_\_\_\_

The party should make reasonable efforts to designate as Highly Protected Information only the portions of the information covered by the above definitions.

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 bears the burden of showing 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 192.410 *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 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 Protected Information, Appendix B, are:
  - (a) An employee or counsel of the Regulatory Division at the Oregon Citizens’ Utility Board; and
  - (b) Persons (including attorneys) that are not involved in PacifiCorp’s ongoing 2020AS RFP solicitation process as bidders.
13. Access to Highly Protected Information will be provided to all persons qualified under paragraph 13(b) 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. PacifiCorp will distribute

Highly Protected Information to only those persons qualified under paragraphs 12 and 13(a).

**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, 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 Highly Protected Information may not be disclosed to the person subject to the objection.

**Use of Highly Protected Information:**

16. 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.
17. 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.
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 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.

**Duration of Protection:**

20. 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.

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**I. 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 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: \_\_\_\_\_