

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2193

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Approval of 2022 All
Source Request for Proposals.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On March 13, 2023, 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 that is a part of the 2022 All Source Request for Proposals (2022 AS RFP). PacifiCorp explains that it is currently evaluating benchmark bids, submitted December 9, 2022, for the 2022 AS RFP, and states that the bids include commercially sensitive and highly confidential information. PacifiCorp anticipates that concurrent and future filings in this docket will contain bid information and related analysis that is also extremely commercially sensitive. The 2022 AS RFP is ongoing and PacifiCorp notes that RFP bids from the market are not yet due. The company further states it has not yet finished evaluating bids to select the final shortlist. PacifiCorp characterizes the bid information as highly sensitive, non-public, commercial information.

PacifiCorp seeks additional protection for bid information because disclosure could harm customers by compromising PacifiCorp's ability to successfully negotiate final agreements and could result in less competitive bids in the current and future RFPs. The company states that, by designating the described material as highly protected, it enables PacifiCorp to negotiate least-cost, least-risk agreements that directly benefit the company's retail customers.

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 regulatory division 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 in-person review at PacifiCorp's offices. Third, persons involved in the RFP as bidders, or persons who represent or advise bidders, or persons who have participated in a solicitation in the last five years, 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. 21-300. 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 notes it conferred with the other parties to this proceeding. However, if a party has concerns with the terms of this modified protective order, a response to PacifiCorp's motion may be filed by March 28, 2023 (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 March 28, 2023, 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 general protective order, attached as Appendix A, is adopted.

Made, entered, and effective on Mar 17, 2023.



Christopher J. Allwein
Administrative Law Judge



MODIFIED PROTECTIVE ORDER

DOCKET NO. UM 2193

Scope of this Order:

1. This order supplements General Protective Order No. 21-300 and governs the acquisition and use of “Highly Protected Information” produced or used by any party to docket UM 2193.

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);
 - (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. 23-___

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 Protected or 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). If a party challenges the “Highly Protected Information” designation, the designating party 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 Consent to be Bound section of 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 12(b) only at PacifiCorp's offices. PacifiCorp will distribute Highly Protected Information to only those persons qualified under paragraphs 11 and 12(a).

Objection to Access to Highly 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. 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:

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 to access Highly Protected Information under Paragraph 12

I have read the Modified Protective Order and agree to 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: _____