

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2283

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Waiver of Competitive  
Bidding Rules.

MODIFIED  
PROTECTIVE  
ORDER

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

On May 18, 2023, PacifiCorp, dba Pacific Power, filed a motion for a modified protective order to govern the acquisition and use of protected information produced or used in these proceedings. PacifiCorp states that the order is needed to protect certain information that falls within the scope of ORCP 36(C)(1). Specifically, PacifiCorp states that information to be filed in this proceed could harm customers if released improperly by compromising PacifiCorp's ability to negotiate final agreements successfully and could result in less competitive bids in current and future resource solicitations. More specifically, PacifiCorp asserts that the release of project specific information from previous and ongoing requests for proposals to competitors would undermine third parties' trust in the integrity of PacifiCorp's request for proposals (RFP) process and damage developers whose information is released.

I find that good cause exists to issue a modified protective order, which is attached as Appendix A. A party may appeal this order to the Commission under OAR 860-001-0720.

PacifiCorp also noted as justification for this modified order that "Specifically, this information could provide an advantage to receiving developers in tailor their bids in future procurements."<sup>1</sup> I note that this modified protective order is not granted on these grounds. Consistent with the Commission's competitive bidding rules reflected in Division 89 of our rules specify that RFPs should be designed in such a way as to communicate to bidders system needs so that bidders may develop proposals that support utility systems and address utility needs to the advantage of customers. Finding that information should not be accessible to bidders because that will allow bidders to "tailor their bids" to procurements would be inconsistent with these rules as a stand-alone basis for keeping such information confidential.

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<sup>1</sup> PacifiCorp Motion at 2.

**ORDER**

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

Made, entered, and effective on May 26, 2023.



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Nolan Moser  
Chief Administrative Law Judge



**MODIFIED PROTECTIVE ORDER**

DOCKET NO. UM 2283

**Scope of this Order:**

1. This order supplements General Protective Order No. 23-132 and governs the acquisition and use of “Highly Protected Information” produced or used by any party to docket UM 2283.

**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 MODIFIED 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. Qualified Persons may access Highly Protected Information upon a party signing Appendix B are:
  - (a) An employee or counsel of the Regulatory Division at the Oregon Citizens' Utility Board; and
  - (b) Individuals (including attorneys) not involved in PacifiCorp's ongoing 2022 All Source RFP solicitation process as bidders.

13. A party bound by the General Protective Order No. 23-132 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 15.
14. PacifiCorp will distribute Highly Protected Information to Qualified Persons under paragraph 12 using a secure cloud-based content management system in “review only” mode, which will not permit the downloading or printing of documents; however, Qualified Persons will have access to the document and be able to revisit the document at their convenience throughout the proceeding. Qualified persons are not authorized to, and shall not make, screen shots or 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, and for inclusion in a filing consistent with paragraph 4. 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. If a limited, specific part of a document containing Highly Confidential Information is necessary for purposes of the proceeding, such as inclusion in comments, the party may request such a copy. In response to such a request, PacifiCorp will prepare a copy of the requested portion of the document and provide it to that party through a secure web portal.

**Objection to Access to Highly Protected Information:**

15. 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.
16. 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.
17. PacifiCorp will distribute Highly Protected Information to only those persons under paragraph 12(b) using a secure cloud-based content management system in “review only” mode, which will not permit the downloading or printing of documents; however, Qualified Persons will have access to the document and be able to revisit the document at their convenience throughout the proceeding. Qualified persons are not authorized to, and shall not make, screen shots or 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, and for inclusion in a filing consistent with paragraph 4. 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. If a limited, specific part of a document containing Highly Confidential Information is necessary for purposes of the proceeding, such as inclusion in comments, the party may request such a copy. In response to such a request, PacifiCorp will prepare a copy of the requested portion of the document and provide it to that party through a secure web portal.

**Use of Highly Protected Information:**

18. 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.
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.

**CONSENT TO BE BOUND AND SIGNATORY PAGE**  
DOCKET NO. UM 2283

**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: \_\_\_\_\_

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

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 Confidential 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>		



<p><b>I seek access to the following specific information designated as Highly Protected Information for the following reasons:</b></p>	
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