

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

LC 82

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2023 Integrated Resource Plan.

ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On May 1, 2023, PacifiCorp, dba Pacific Power, filed a motion for Modified Protective Order (MPO). On May 26, 2023, PacifiCorp filed a revised motion for MPO in accordance with OAR 860-001-0420 and OAR 860-001-0080(3) to provide additional protections for highly confidential information, including competitively sensitive, project-specific data obtained from prior resource procurement processes.

PacifiCorp explains the workpapers supporting its 2023 Integrated Resource Plan (IRP) contain competitively sensitive, project-specific information from previous resource procurement processes and further discovery may require the company to respond with such information. PacifiCorp asserts that this information is considered to be competitively sensitive and confidential commercial information and if disclosed improperly could harm customers by compromising the company's ability to negotiate final agreements successfully and could result in less competitive bids in current and future resource solicitations.

The MPO requested by PacifiCorp firstly, requests that individuals (including attorneys) involved in PacifiCorp's ongoing 2022 All Source RFP solicitation process as bidders not be granted access to highly confidential information and states that restricting access to these individuals will better ensure that bidders will not improperly obtain an unfair competitive advantage by relying on commercially sensitive pricing and cost information and analysis that may be provided in this proceeding. Secondly, PacifiCorp requests that all highly confidential information be provided via a secure cloud-based content management system in review only mode. PacifiCorp states that this will prevent widespread distribution of the highly

confidential information and makes public disclosure, and the attendant harm, substantially less likely.

The MPO describes electronic filing of highly protected information. Highly protected information may not be used or disclosed for any purpose other than participation in this proceeding and may not be electronically copied or distributed. This MPO would supplement the existing General Protective Order No. 23-132.

On June 12, 2023, NewSun Energy LLC responded to the motion for MPO. NewSun stated it agreed that the MPO is necessary but has concerns that PacifiCorp over designates data as confidential or highly confidential. NewSun may seek to challenge the designation of highly protected information as outlined in the MPO.

PacifiCorp represents that it conferred with all relevant parties regarding the present motion and Sierra Club communicated that it did not oppose the motion. The deadline to object or respond to the motion for MPO has passed and no other parties have objected.

I find that good cause exists to issue the modified protective order, which is attached as Appendix A.

Made, entered, and effective on Jun 15, 2023.



Katie Mapes
Administrative Law Judge



MODIFIED PROTECTIVE ORDER

DOCKET NO. LC 82

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 LC 82.

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 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.

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. LC 82

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: _____

II. 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.

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

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