

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2183

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for Authority to Implement a
Decommissioning Cost Recovery
Adjustment and Coal Removal
Mechanism.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On June 22, 2023, PacifiCorp filed a motion for a modified protective order (MPO) requesting expedited consideration. PacifiCorp seeks additional protections for information it characterizes as highly confidential, including information from a thirty-party engineering group that it states is competitively sensitive.

The information in question from the Kiewit Engineering Group, Inc., are contractor-assisted engineering studies of decommissioning costs for certain coal-fired generation plants. PacifiCorp states that this information was requested by the Independent Evaluator and contains competitively sensitive information of Kiewit and its first-tier subcontractors. PacifiCorp asserts the information is highly proprietary and disclosure would cause harm.

The MPO requested by PacifiCorp will require interested parties to review highly confidential data at PacifiCorp's offices or Kiewit's offices through a cloud-based content management system in view-only mode and qualified parties will not be authorized to make copies of any document designated as highly confidential. The company is also requesting that qualified parties take limited notes regarding the documents for reference purposes only. PacifiCorp states that if a party reasonably believes that the highly confidential information is necessary in testimony or at hearing, it will work with the party to prepare an unredacted copy of the highly confidential portion.

This MPO would supplement the existing General Protective Order No. 21-218. 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.

PacifiCorp attests that it has conferred with all parties in this matter and no party opposes the entry of the MPO.

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

Jun 26, 2023

Made, entered, and effective on _____.



Katharine Mapes
Administrative Law Judge



MODIFIED PROTECTIVE ORDER
Docket No. UM 2183

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. This order covers two categories of Highly Protected Information:

- A. Highly Protected Information of PacifiCorp’s third-party contractor Kiewit Engineering Group, Inc. and its first-tier subcontractors (collectively, Kiewit) who assisted in the 2020 decommissioning studies for PacifiCorp (Kiewit Studies) (Kiewit’s Highly Protected Information). For purposes of this order, Kiewit’s Highly Protected Information may include, but is not limited to, its proprietary pricing data, modeling software, historical data, calculations, estimating drawings, and cost estimation methodology used to prepare the Kiewit Studies.
- B. All other documents designated as Highly Protected Information.

General Protective Order No. 21-218 governs the acquisition and use of “Protected Information.”

Designation of “Highly Protected Information”:

2. Any party, including a third-party contractor for a party (which here means Kiewit), 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 particularly 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 definition in Paragraph 2 of this order.

4. 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.

5. 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:

6. 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 that the “Highly Protected Information” designation is appropriate. Any party may request that the ALJ hold a conference to help resolve disputes about proper designation.

7. 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.

8. 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) but is not required to disclose the challenged information itself. If the designating party does not timely respond to the objection, the Commission will remove the protected designation from the challenged information.

9. The challenging party must either file a written reply to any response within five business days of service of an objection or the challenged protected designation shall be deemed accepted. 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, as necessary. Until a ruling by the ALJ, the challenged protected designation shall be treated as Highly Protected Information pursuant to this Modified Protective Order. If the ALJ determines that the challenged protected designation should be removed, such ruling will not take effect for a period of fourteen (14) days to give the designating party time to appeal the ALJ’s decision. Any decision of the ALJ to remove a protected designation shall be stayed during the pendency of any appeal.

Access to Highly Protected Information:

10. 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 taking part as an analyst or in a decision-making, managerial, supervisory, or support role in the Proceeding;
- (b) Assistant Attorneys General assigned to represent the Commission

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

- (a) An employee who is taking part in the review or litigation of the Proceeding or counsel of the Regulatory Division at the Oregon Citizens' Utility Board;
- (b) Counsel for a party; and
- (c) The Independent Evaluator (IE) designated by the parties and the Commission in this docket.

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.

12. After the release of the IE's report evaluating such information, a party bound by the General Protective Order No. 21-218 may seek to qualify its own expert (limited to one individual) to access certain specific Highly Protected Information by:

- (a) Having such expert complete and sign Appendix C, and submitting that information to the designating party and the Commission;
- (b) Identifying and describing the certain specific Highly Protected Information being sought; and
- (c) Explaining why such party's expert requires direct access to the certain specific Highly Protected Information being sought. Within five business days of receiving a copy of Appendix C and the above details, the designating party must either provide the access to the requested information designated as Highly Protected Information or file an objection under paragraph 15.

13. Access to Kiewit's Highly Protected Information, as described in Paragraph 1, will be provided to Qualified Persons at PacifiCorp's offices or Kiewit's offices. For all other Highly Protected Information, access will also be provided in a secure cloud-based content management system in view only mode. 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 regulatory 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, 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 an unredacted copy of the required portion of the document and provide it to that party within five business days.

14. 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 provided pursuant Paragraph 22 or uploaded to a file folder designated "highly protected" in Huddle, if applicable.

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. If Kiewit is the designating party believing there are reasons to restrict access to Highly Protected Information, PacifiCorp may act on Kiewit's behalf in objecting to access to the Highly Protected Information. 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. If the ALJ determines that the specific Highly Protected Information may be disclosed to the person seeking access, such ruling will not take effect for a period of fifteen (15) calendar days to give the designating party time to seek certification of the ALJ's decision. Any decision of the ALJ to provide a person under paragraph 15 with specific Highly Protected Information may not be disclosed to the person during the pendency of any certification or appeal.

Use of Highly Protected Information:

17. 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 13 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.

18. 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.

19. 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.

20. 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.

21. Other than the parties designated in Paragraph 10 and the IE, no parties will have access to any of Kiewit's independently prepared workpapers and data until after the release of the IE's report evaluating such information. After the release of the IE report, Qualified Persons under Paragraphs 11 and 12 may seek access to these third-party documents through discovery pursuant to this Order.

22. If Highly Protected Information must be submitted to the Commission's Administrative Hearings Division, the designating party must file a copy of the referenced document containing Highly Protected Information with the Commission's Administrative Division printed on green paper and placed in a sealed envelope or other appropriate container. The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. 23-___ AND CONTAINS HIGHLY PROTECTED INFORMATION. THE INFORMATION MAY BE SHOWN ONLY TO PERSONS QUALIFIED TO ACCESS HIGHLY PROTECTED INFORMATION AS DEFINED IN THE ORDER.

Duration of Protection:

23. The Commission will preserve the designation of information protected as Highly Protected Information until the Highly Protected Information is no longer considered to be Highly Protected Information or 2040. The Commission will notify PacifiCorp at least two weeks prior to the release of Highly Protected Information. Nothing in this paragraph is intended to conflict with Oregon public record law requirements.

APPENDIX B

**Signatory Page for Highly Protected Information
Docket No. 2183**

Persons Qualified pursuant to Paragraph 11, 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 12 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, complete and thorough description of practice and current and past clients:		