

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 439

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2023 Power Cost Adjustment Mechanism.

MODIFIED PROTECTIVE ORDER

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

On August 16, 2024, PacifiCorp, dba Pacific Power, filed a motion for a modified protective order. Under OAR 860-001-0080(3)(c), the Administrative Law Judge (ALJ) assigned to this docket provided expedited review of the motion and issued a modified protective order on August 19, 2024, to facilitate the discovery process. Commission Staff filed a response to PacifiCorp’s motion on August 20, 2024. PacifiCorp filed a reply on August 21, 2024. Under our rules, a *de novo* review of the terms of the modified protective order occurs when a response is filed.<sup>1</sup>

In Commission proceedings, a party may seek a modified protective order to impose “specialized restrictions on access to certain highly confidential information.”<sup>2</sup> A modified protective order “may limit the persons that may access the highly protected information, or designate the time or place or special handling for highly protected information.”<sup>3</sup>

We address this dispute in a Commission order because the handling and use of the same type of highly confidential information at issue here was the subject of our directives in Order No. 21-379. We find that further direction is warranted at this time. We conducted a *de novo* review of the terms of the modified protective order and after considering the parties’ filings, grant the motion for a modified protective order with modifications as described below.

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<sup>1</sup> OAR 860-001-0080(3)(e).

<sup>2</sup> OAR 860-001-0080(1).

<sup>3</sup> OAR 860-001-0080(3).

## **I. PacifiCorp's Arguments**

PacifiCorp sought a modified protective order because it received discovery requests from Commission Staff and the Alliance of Western Energy Consumers (AWEC) seeking documents related to the company's coal supply agreements that PacifiCorp asserts contain highly confidential information. PacifiCorp states the modified protective order is needed to prevent public disclosure of those documents and the resulting harm to the company, its ratepayers, and third parties. The company asserts the documents contain trade secrets as defined by ORCP 36(C)(1).

To protect these highly sensitive documents and reduce the risk of public disclosure, PacifiCorp proposes to provide them to qualified individuals in view-only mode in third-party content management software maintained by the company. Access to this software, and the relevant documents, would be managed by PacifiCorp. The company would provide excerpts of the documents upon request for use in these proceedings.

PacifiCorp asserts that similar modified protective orders have been entered in other recent dockets, including LC 77, UE 400, and UE 420.

In its reply, PacifiCorp agrees to provide Staff with excerpts of documents within forty-eight hours (exclusive of holidays and weekends) of receiving such a request. The company asserts this would reduce any potential advantage it may receive from knowing what portions of documents Staff intends to rely on in testimony.

## **II. Commission Staff's Arguments**

Staff opposes the modified protective order as proposed by PacifiCorp and requests that a modified protective order be issued that requires information designated as highly confidential to be provided to Staff in a downloadable format using the Huddle file-sharing platform. Staff agrees that the information responsive to its data requests may be protected by a modified protective order, however, disagree that PacifiCorp's proposal is warranted.

Staff asserts PacifiCorp has not provided good cause to support paragraphs 16 and 17 in PacifiCorp's proposed modified protective order. Staff argues there is no good cause to use an additional discovery platform aside from Huddle, especially one that is controlled and monitored by PacifiCorp and that doing so would hinder Staff's ability to develop evidence in this proceeding by imposing unnecessary, inefficient, and burdensome restrictions. Staff is also concerned that PacifiCorp's proposal does not specify how it would determine what documents are highly confidential and why certain highly

confidential information can be uploaded to Huddle while other highly confidential documents would need to be uploaded to the third-party discovery platform.

Staff argues that PacifiCorp's proposal allowing view-only access but providing excerpts of the documents addresses PacifiCorp's concerns with inadvertent disclosure of the contents of those documents. Staff further argues that PacifiCorp's proposal could give it a procedural advantage because it would know the specific pages and paragraphs of the documents that Staff intends to use in testimony or cross-examination. Staff notes that the company has previously provided paper service and Huddle upload for documents like those at issue here, though also recognizes that similar procedures have been used in recent proceedings.

Next, Staff argues that the proposed access restrictions are not appropriate for Staff, as the modified protective order is meant to preclude unlimited access to confidential information that might provide a competitive commercial advantage. Staff argues that its role as a regulator places it in a different position than other parties and because it has no commercial interest in the information, does not need to be subjected to PacifiCorp's proposed access restrictions. Further, Staff argues public records law requires it to retain public records, and information viewed in discovery becomes a public record.

Staff asserts PacifiCorp's motion is deficient in that it does not identify available intermediate measures to protect highly confidential information in this proceeding.

Finally, Staff proposes three intermediate measures that could be added to the modified protective order: (1) provide copies of the full document to Staff on request; (2) limit the time in which PacifiCorp must provide documents on request; and (3) require that PacifiCorp identify the need for the modified protective order within two days of receipt of a data request.

### **III. Resolution**

PacifiCorp and Staff agree that the information responsive to Staff's data requests constitute highly confidential information but disagree on what is necessary to protect such information.

Here, we must decide whether PacifiCorp has established that its proposed modified protective order in the context of this proceeding reasonably balances PacifiCorp's interest in protecting highly confidential material with Staff's ability to meaningfully participate in this proceeding without being unduly burdened by the modified protective order's requirements.

Staff asserts that receiving highly confidential information in third-party content management software maintained by PacifiCorp in view-only mode is burdensome and hinders its ability to effectively participate in this proceeding. PacifiCorp responds that it must protect this sensitive information and do as much as possible to reduce the risk of its inadvertent disclosure due to the significant ramifications of its public dissemination.

Importantly, we note at the outset that the fact that a modified protective order has been issued in the past does not automatically justify its continued use in new dockets. Both parties make reasonable arguments. We agree with Staff that its role is different than other parties and that its interest in the documents responsive to its data requests is not commercial in nature, nor could it obtain a competitive advantage by having access to them. We also agree with PacifiCorp that there exists risk in unintended disclosure of these documents and that limiting the number of circulating copies of them is prudent.

In Order No. 21-379, we addressed the need for the parties to reassess the procedures governing coal supply agreements and mine plans in TAM proceedings.<sup>4</sup> There, we did not require that new coal supply agreements and mine plans be filed as a default in TAM proceedings but did require PacifiCorp to provide additional access to these documents. We did not prescribe how this might work and left it to the parties to determine the exact mechanics of how future modified protective orders would work to protect these documents while allowing increased access to them. We understand that PacifiCorp's proposal here is a result of Order No. 21-379.

After considering the briefing on the motion, we grant PacifiCorp's motion, however, modify the protective order to: (1) include PacifiCorp's commitment that it will provide any excerpts of documents requested within 48 hours, excluding weekends and state holidays; (2) allow for the possibility that an entire document may need to be provided to Staff on request; and (3) to clarify which highly confidential documents would be uploaded to Huddle and which documents would be uploaded to the software maintained by PacifiCorp. We recognize that it is possible that an entire document is necessary for a party to fully contextualize and explain it. An entire document may be necessary for the purposes of submitting it as an exhibit to testimony so that we may fully consider and understand its import. We note, however, that this is not license to simply request every document in its entirety.

Although we grant PacifiCorp's motion with minor amendments, we do so in part because the need for a modified protective order was identified at a late stage in this

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<sup>4</sup> *In the Matter of PacifiCorp, dba Pacific Power, 2022 Transition Adjustment Mechanism*, Docket No. UE 390, Order No. 21-379 at 4-5 (Nov. 1, 2021).

proceeding, requiring it to be addressed expeditiously. We are not convinced that uploading all of these materials in their entirety to Huddle is appropriate, consistent with our determination in Order No. 21-379. However, the type of highly confidential information at issue here will continue to be addressed in future proceedings and we agree with Staff that PacifiCorp's proposed procedures impose burdens on Staff's review and may affect their ability to effectively participate in those cases. We find that more thorough investigation and consideration of alternative means of protecting this information in a less burdensome manner is warranted for future proceedings, especially where this information relates to issues of paramount concern to the Commission.

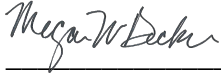
The highly confidential documents responsive to Staff's data requests here will continue to be relevant to the power cost related filings that regularly come before the Commission. In such dockets, which must be addressed within a limited timeframe, we encourage the company to seek a protective order ahead of its filing, especially where a dispute is anticipated, to provide adequate time to address the appropriate protective order without otherwise delaying the proceeding. We expect that PacifiCorp and Staff will continue to address how to protect the highly confidential material at issue here in future proceedings while further reducing the burden on Staff in reviewing discovery responses, preparing testimony, and otherwise effectively participating in these proceedings.

We also expect that in future proceedings, the company will provide timely notice of the need for a modified protective order well in advance of any deadlines to provide responses to discovery requests. Providing such notice two days before discovery responses are due is too late in all but the most exigent circumstances.

**ORDER**

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

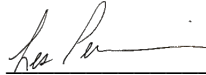
Made, entered, and effective Aug 28, 2024.



**Megan W. Decker**  
Chair



**Letha Tawney**  
Commissioner



**Les Perkins**  
Commissioner

Attachment: Appendix A – Modified Protective Order

**MODIFIED PROTECTIVE ORDER**

DOCKET NO. UE 439

**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 UE 439.

**Designation of Protected Information and "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 not adequately protected by the 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. 24-\_\_\_\_

The party should make reasonable efforts to designate as Highly Protected Information only the portions of the information that satisfies paragraph 2 of this Modified Protective Order.

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 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 192.311 *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 ten 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 Protective Information, Appendix B, are:
  - (a) Counsel for the party;
  - (b) An employee of the Regulatory Division at the Oregon Citizens' Utility Board.



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.

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.

**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, or objects to a person seeking qualification under Paragraph 13, the designating party must provide the 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 five business days of service of an objection. The ALJ will make all reasonable efforts to resolve the matter within ten 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.
16. Access to Highly Protected Information that has been previously filed in this or another Commission docket will be provided to Qualified Persons through Huddle or other secure cloud-based content management system. Certain Highly Protected Information that has not been filed in this or another Commission docket and for which the Company requests special handling, may only be provided to Qualified Persons through a secure cloud-based content management system in view-only mode, which will not allow the document to be downloaded or printed; 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, or an entire document, containing Highly Protected Information is necessary for purposes of the proceeding, such as for use in testimony or a filing, 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 within forty-eight hours, exclusive of weekends and state holidays, through a secure web portal.

**Use of Protected Information:**

17. 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 and subject to the limitations described in paragraph 16. A Qualified Person may discuss Highly Protected Information obtained under this order only with other Qualified Persons who have obtained the same information under this order.
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.

**Duration of Protection:**

21. 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. UE 439

**I. Consent to be Bound:**

\_\_\_\_\_(Party) agrees to be bound by the terms of this Modified Protective Order.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**II. Persons Qualified pursuant to Paragraph 12: 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 Confidential 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: \_\_\_\_\_

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