

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 450

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2026 Transition Adjustment Mechanism.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED
WITH MODIFICATIONS

I. INTRODUCTION AND PROCEDURAL HISTORY

On March 31, 2025, PacifiCorp, dba Pacific Power, filed a motion for a modified protective order. Under OAR 860-001-0080(3)(c), Administrative Law Judge (ALJ) Mellgren provided expedited review of the motion and issued a modified protective order on April 1, 2025, to facilitate timely access to PacifiCorp’s planned filings while preserving the ability of the parties to object to PacifiCorp’s proposed modified protective order. On April 8, 2025, Commission Staff filed a response to PacifiCorp’s motion. No other party filed a response. PacifiCorp filed a reply on April 15, 2025. Under Commission rules, a *de novo* review of the terms of the modified protective order occurs when a response is filed.¹

In Commission proceedings, a party may seek a modified protective order to impose “specialized restrictions on access to certain highly confidential information.”² 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.”³

After conducting *de novo* review of the terms of PacifiCorp’s proposed modified protective order and after considering the parties’ filings, we grant the motion for a modified protective order with further modifications as described below.

¹ OAR 860-001-0080(3)(e).

² OAR 860-001-0080(1).

³ OAR 860-001-0080(3).

II. POSITIONS OF THE PARTIES

A. PacifiCorp

PacifiCorp states a modified protective order is necessary to “provide additional protection for highly commercially sensitive, non-public information related to PacifiCorp’s coal supply agreements, fueling strategy at its coal-fired generation facilities, and the documents and records of affiliated coal mining companies.”⁴ The company states these documents “identify PacifiCorp’s proprietary strategies for managing its coal supplies at all of its coal-fired generation facilities and include market sensitive information regarding PacifiCorp’s coal procurement.”⁵ The company asserts that “[r]elease of this information would put PacifiCorp at a commercial disadvantage when negotiating coal supply agreements and could lead to higher costs that would be passed on to customers”⁶ and could expose the company to claims from its partners for breach of contract. The company asserts the documents contain trade secrets as defined by ORCP 36(C)(1) and explains that its requested modified protective order is the same as that issued by the Commission in Order No. 24-299.⁷

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; however, qualified individuals would have access to view the documents at any time. The company would provide excerpts of the documents upon request for use in testimony and briefing in these proceedings. PacifiCorp explains it believes this process balances its interest in preserving the confidentiality of this material while allowing Staff to review it in this proceeding.

The company provides examples of issues where protected information was publicly disclosed, including where Staff did not correctly redact information in public filings, where an intervenor was given access to confidential information in Huddle while there was an active dispute about whether that intervenor could access that information, and where an intervenor used protected information in another proceeding.

PacifiCorp disagrees with Staff that the proposed modified protective order violates Staff’s duty to preserve public records because, according to the company, they are not used or retained by Staff simply if they are reviewed and that the obligation to preserve

⁴ PacifiCorp Motion at 1.

⁵ *Id.* at 3.

⁶ *Id.*

⁷ *In the Matter of PacifiCorp, dba Pacific Power, 2023 Power Cost Adjustment Mechanism*, Docket No. UE 439, Modified Protective Order No. 24-299 (Aug. 28, 2024).

such records is not triggered until they are used in a filing in a proceeding. The company also explains it believes Staff conflates the right to inspect documents in its regulatory capacity with a duty to retain files and that the modified protective order still allows Staff to inspect the files at any time. PacifiCorp points out that under Staff's interpretation of public records laws, Staff would have needed to retain documents it reviewed in-person at the company's office in prior proceedings but never took possession of.

B. Commission Staff

Staff opposes portions of the modified protective order as proposed by PacifiCorp as unduly burdensome and unjustified 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 platform. Staff agrees that the information responsive to its data requests may be protected by a modified protective order; however, it disagrees that PacifiCorp's proposal is warranted. Staff asks, "that the Commission modif[y] PacifiCorp's proposed MPO to require information designated as highly confidential and requested by Staff to be provided to Staff in a fully downloadable format using the Huddle platform."⁸

Staff argues that the proposed restrictions and associated processes create barriers to Staff's review of PacifiCorp's coal supply agreements. Staff describes a history of the disputes concerning access to PacifiCorp's coal supply agreements and associated documents as well as its arguments in other dockets for expanding Staff's access to them. Staff notes that despite the Commission addressing some of Staff's concerns in recent dockets, it is still burdensome to access material in a timely manner when the only option for review is in view-only mode through the company's platform. Staff explains: "The reality of the situation is that the constraints of PacifiCorp's MPO undermines Staff's ability to effectively examine coal supply contracts, and PacifiCorp is not going to agree to upload its coal supply agreements to Huddle unless ordered to do so by the Commission."⁹

Staff next argues that it is concerned about its obligations under Oregon's public records laws to preserve records used in the course of its work. Staff asserts that "[r]ecords that are obtained by a public body from private parties in the course of fulfilling its statutory duties are public records if owned, used, or retained by the public body."¹⁰ Staff explains that it believes this means that Staff must retain contracts it reviews as public records while fulfilling its regulatory function.

⁸ Staff Response at 14.

⁹ *Id.* at 8.

¹⁰ *Id.* at 9.

Staff argues viewing documents in view-only mode and not being able to take screen shots or verbatim notes hinders its ability to effectively analyze PacifiCorp's coal supply contracts. Staff explains that the precise language in these documents is important, and the inability to take verbatim notes makes the review and analysis more difficult, hindering Staff's ability to compare the terms of multiple contracts across many coal units.

Staff asserts PacifiCorp has not justified the use of a file-sharing platform outside Huddle, the Commission's standard platform for the exchange of discovery in its proceedings, noting that the software is secure and designed for this type of material. Staff notes that it would be better to restrict access to certain people within Huddle as opposed to requiring Staff to use the platform controlled by the company.

Staff believes PacifiCorp's examples where there were issues with confidential information in Commission proceedings are inapposite and not justification for its requested modified protective order, noting PacifiCorp provides no examples involving Commission Staff divulging confidential information. Staff also explains that PacifiCorp itself recently inadvertently emailed non-public sensitive information to parties in a Commission docket and subsequently asked recipients to delete it. Staff asserts its role as an independent regulator with no commercial interest in any of PacifiCorp's highly confidential material places it in a unique position compared to other litigants in Commission proceedings.

Finally, Staff argues that the proposed modified protective order is too vague in its description of material subject to the modified protective order and provides the company with too much discretion in deciding what material would be made available in Huddle and what material would be available in the company's file-sharing platform.

III. RESOLUTION

In Order No. 24-299, we recounted the recent history of PacifiCorp and Staff's long-running dispute concerning the level of protection that should be afforded certain highly confidential material related to the company's coal supply. In that order, we explained:

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.¹¹

We directed PacifiCorp and Staff to continue to address how to protect this material “while further reducing the burden on Staff in reviewing discovery responses, preparing testimony, and otherwise effectively participating in these proceedings.”¹² This same issue now presents itself in PacifiCorp’s 2026 Transition Adjustment Mechanism proceeding, with little progress made in response to our directive for the parties to consider alternate means of protecting this information.

We continue to conclude that material relating to PacifiCorp’s coal supply agreements, fueling strategy at its coal-fired generation facilities, and the documents and records of affiliated coal mining companies is highly confidential information that requires a heightened level of protection. We further continue to conclude that Staff’s ability to effectively participate in these proceedings is burdened by the process proposed again by the company here.

It is essential that Staff be able to effectively conduct their regulatory investigations in our dockets and we do not believe PacifiCorp’s proposal adequately balances the need to protect this highly confidential information with the need to allow Staff to do their jobs. We identify three main issues with PacifiCorp’s process, while recognizing that additional issues and burdens on Staff’s review may exist but are not sufficiently developed for us to resolve here. First is the issue of Staff’s need to retain records of documents it uses in the course of its work. Second is confusion over the definition of “verbatim notes” in PacifiCorp’s proposed modified protective order. Third is the potential strategic advantage the company can gain when Staff requests excerpts for use in testimony, exhibits, or briefing.

With this in mind, and after weighing the need to maintain the highly confidential nature of this material and reduce the risk of its public disclosure with the burdens imposed on Staff to meet its regulatory duties in this proceeding, we grant PacifiCorp’s motion for a modified protective order with further modifications intended to reduce the burden on Staff’s ability to effectively participate in this docket.

First, we will not allow PacifiCorp to use a separate discovery platform. We require that PacifiCorp submit any requested Highly Protected documents to Huddle in a secure manner. This includes PacifiCorp’s coal supply agreements, documentation of the fueling strategy at its coal-fired generation facilities, and the documents and records of affiliated

¹¹ Order No. 24-299 at 5.

¹² *Id.*

coal mining companies (collectively, Highly Protected Coal Documents). These Highly Protected Coal Documents will be uploaded to Huddle where it will be available for view-only use by qualified individuals in this docket under this MPO. This will address Staff's need to records of documents 'used' in the course of fulfilling its statutory duties. This will also continue to limit the number of circulating copies of these agreements, while further easing the burden on Staff.

Excerpts for use in testimony or other filings in this docket must still be requested directly from PacifiCorp, consistent with the proposed MPO. However, to limit any strategic advantage the company may receive from being privy to the contents of these requests, we require that PacifiCorp designate a limited number of individuals to process requests for excerpts. These individuals may not be active participants in this docket and may not share information about what documents or excerpts are being requested with employees or counsel participating in this case. PacifiCorp is directed to identify in the docket by May 28, 2025, the individuals at the company to contact for excerpts and their contact information.

We further clarify:¹³

- That any highly protected information that has been previously filed or made available for download via Huddle will continue to be made available for download through Huddle;
- That the highly protected coal documents to be afforded additional protections and provided via view-only access is limited to Highly Protected Coal Documents;
- To ensure an effective means for Qualified persons to collaborate, that qualified persons may display Highly Protected Coal Documents using the Microsoft Teams screen share feature with other Qualified persons, provided that no individuals who are not Qualified persons are able to see or hear what is being displayed or discussed, and that the meeting is not recorded; and
- That the phrase "verbatim or substantive transcript of the documents" does not prohibit all note-taking with respect to Highly Protected Coal Documents. Specifically, we interpret this provision to mean that qualified persons may take hand-written or digital notes necessary to conduct the analysis required to

¹³ In addition to these clarifications, we note that we have made changes to conform the MPO to the MPO recently adopted in docket UM 2377. In particular, Paragraph 12 has been edited to eliminate the requirement to provide an ongoing list of those qualified to sign the protective order. Paragraph 13 has been edited to specify that access will be provided to the protected information rather than that the designating party will provide access.

investigate the issues in this docket, which may include specific figures or limited excerpts from the Highly Protected Coal Documents. Any such notes must be handled consistent with other highly protected materials under the MPO.

We recognize the need to more broadly address how to balance facilitating access to information with safeguarding sensitive information. We believe this is best accomplished by a comprehensive review of our rule on protective orders, our general protective order, and the range of modified protective orders used in our proceedings more broadly. We note that activity in docket AR 641, to update our Division 1 Rules, which includes our rule on protective orders, will resume later this year. However, we determine near term action regarding protective orders is essential and we direct the Administrative Hearings Division to open a docket to review and update our rule on protective orders in coordination with a review of the use of protective orders in our proceedings. We believe this process will provide Staff, the utilities, and other interested parties an opportunity to work together on developing processes to facilitate parties' participation in our proceedings while appropriately safeguarding sensitive information. We anticipate that this process will include reviewing the available methods of sharing, transmitting, and storing this information, and potentially address the development of template provisions and standardized procedures.

IV. ORDER

IT IS ORDERED that:

1. PacifiCorp, dba Pacific Power's motion for a modified protective order is granted as modified in this order and set forth in Attachment A.
2. The Administrative Hearings Division open a docket to review the use of protective orders in our proceedings and address updates to OAR 860-001-0080.

Made, entered, and effective May 23 2025.



Letha Tawney
Commissioner



Les Perkins
Commissioner



MODIFIED PROTECTIVE ORDER

DOCKET NO. UE 450

Scope of this Order:

1. This order supplements General Protective Order No. 23-132 and governs the acquisition and use of “Highly Protected Information” and “Highly Protected Coal Documents” produced or used by any party to docket UE 450.

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 not adequately protected by the general protective order.

Highly Protected Information that is requested in the form of copies of PacifiCorp’s coal supply agreements, documentation of the fueling strategy at its coal-fired generation facilities, and the documents and records of affiliated coal mining companies may be designated as “Highly Protected Coal Documents.” This designation is limited to copies of those documents.

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. 25-_____

To designate information as Highly Protected Coal Documents, the following legend must be placed on the material:

HIGHLY PROTECTED INFORMATION
SUBJECT TO MODIFIED PROTECTIVE ORDER NO. 25-_____

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." For materials constituting Highly Protected Coal Documents, the file should be provided for upload to a view-only Huddle file folder designated as "Highly Protected Coal Documents."

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:

7. A party may informally challenge any designation of Highly Protected Information or Highly Protected Coal Documents 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" or "Highly Protected Coal Documents" 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 and Highly Protected Coal Documents:

11. Only Qualified Persons may access Highly Protected Information **and Highly Protected Coal Documents** designated by another party under this Modified Protective Order. Persons automatically bound by this protective order and qualified to access Highly Protected Information **and Highly Protected Coal Documents** are:
 - (a) Commission employees; and
 - (b) Assistant Attorneys General assigned to represent the Commission.
12. Persons qualified to access Highly Protected Information **and Highly Protected Coal Documents** upon a party signing the Signatory Page for Highly Protective Information **and Highly Protected Coal Documents**, Appendix B, are:
 - (a) Counsel for the party;
 - (b) An employee of the Regulatory Division at the Oregon Citizens' Utility Board.
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 **and Highly Protected Coal Documents** 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 file an objection under paragraph 15 or access will be provided.

Objection to Access to Protected Information:

14. All persons qualified to have access to Highly Protected Information **and Highly Protected Coal Documents** will have access to Highly Protected Information **and Highly Protected Coal Documents** 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 **and Highly Protected Coal Documents** may not be disclosed to the person subject to the objection.
16. Access to Highly Protected Information that has been previously filed will be provided to Qualified Persons via download through Huddle or other secure cloud-based content management system. **Access to Highly Protected Coal Documents** will only be provided to Qualified Persons through Huddle on a view-only basis, which will not allow the document to be downloaded or printed. Qualified persons are not authorized to, and shall not make screen shots or copies of any document designated as **Highly Protected Coal Documents**. Qualified persons reviewing the **Highly Protected Coal Documents** 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. PacifiCorp shall designate at least two employees for responding to these requests. These individuals may not be active participants in this docket and may not share information about the excerpts that are being requested with those employees or counsel participating in this proceeding.

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 or **Highly Protected Coal Documents** 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 **and Highly Protected Coal Documents** 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 or **Highly Protected Coal Documents**.

CONSENT TO BE BOUND AND SIGNATORY PAGE
DOCKET NO. UE 450

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.

Signature:		Date:
Printed Name:		
Physical Address:		
Email Address:		
Employer:		
Associated Party:		
Job Title:		
If Not employee of party, description of practice and clients:		
I seek access to the following specific information designated as Highly Protected Information for the following reasons:		