

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

LC 85

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2025 Integrated Resource Plan.

**MODIFIED
PROTECTIVE
ORDER**

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

I. INTRODUCTION AND PROCEDURAL HISTORY

On April 18, 2025, PacifiCorp, dba Pacific Power, filed a motion for a modified protective order (MPO). Under OAR 860-001-0080(3)(c), Administrative Law Judge (ALJ) Mellgren provided expedited review of the motion and issued a MPO on April 18, 2025, to facilitate timely access to PacifiCorp’s planned filings while preserving the ability of the parties to object to PacifiCorp’s proposed MPO. On May 5, 2025, the Oregon Citizens’ Utility Board (CUB) and Staff of the Oregon Public Utility Commission each filed a response in opposition to certain provisions in PacifiCorp’s protective order. Under Commission rules, a *de novo* review of the terms of the MPO occurs when a response is filed.¹

In Commission proceedings, a party may seek a MPO to impose “specialized restrictions on access to certain highly confidential information.”² A MPO “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 MPO and after considering the parties’ filings, I grant the motion for a MPO with further modifications as described below. This order draws on the Commission’s order in docket UE 450, where the issues were substantially similar, and adopts the same provisions as were adopted by the Commission in that order.

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 MPO is necessary because “[t]he workpapers supporting PacifiCorp’s 2025 Integrated Resource Plan (IRP) contain competitively sensitive, project-specific information from previous resource procurement processes. Further, discovery in this proceeding may require the [c]ompany to respond with such information, or information pertaining to commercially sensitive coal contracts or long-term fuel plans.”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.

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. 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.

PacifiCorp disagrees with Staff that the proposed MPO 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 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 MPO 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.

⁴ PacifiCorp Motion for Modified Protective Order at 5.

⁵ *Id.* at 5, n 6.

⁶ *Id.*

PacifiCorp also objects to CUB's argument that it needs to be able to access documents under the MPO after the close of the proceeding, stating "[t]his is not contemplated under the standard text of the MPO, which is routinely approved by this Commission. The text of the MPO explicitly states: '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.*'"⁷

PacifiCorp finally outlines its process for allowing parties to obtain partial or full documents for use in testimony and filings, stating that Paragraph 16 of the MPO states: "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."⁸

B. Commission Staff

Staff opposes PacifiCorp's use of its own secure site as opposed to use of the Commission's Huddle platform. It states that it "has little to no experience with what PacifiCorp describes as its 'secure cloud-based content management system operated by the company in view-only mode'" but that it has "heard from co-workers that it is a type of PacifiCorp webpage, that access is unreliable due to technical glitches, and viewing may be limited in time or duration." It also cites to the "view only" language in the MPO and asks that the language be mirrored to the language determined to be reasonable in docket UE 450.

C. CUB

CUB states that it agrees with the sentiments raised by Commission Staff in response to the similar protective order in docket UE 450. First, it argues, Huddle is a workable solution for sharing and retaining information and allowing the Commission to meet its obligations under the Oregon Public Records Act. Second, it states that it is unclear how the cloud-based content management systems envisioned by PacifiCorp in the MPO allow the Commission to maintain the 5-year designation of the information as HPI. It also notes that Huddle "allows parties with access this [sic] to this docket in Huddle to verify information in the future by checking the responses."⁹ Third, by setting the information as view only, CUB states it is unclear how CUB would be able to use the information in workpapers and testimony.

⁷ PacifiCorp Reply at 7.

⁸ *Id.* at 8.

⁹ CUB Response at 1.

D. Resolution

In its recent MPO in docket UE 450, the Commission concluded 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.¹⁰ It further concluded that Staff's ability to effectively participate in these proceedings was burdened by the process proposed by the company. The Commission adopted a number of changes to the MPO proposed by the company. The provisions in that proposed MPO were substantially similar to the provisions proposed here and accordingly, I adopt the same revisions required by the Commission in docket UE 450.

First, PacifiCorp may not use a separate discovery platform. It must 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 coal mining companies (collectively, Highly Protected Coal Documents). These Highly Protected Coal Documents will be uploaded to Huddle where they will be available for view-only use by qualified individuals in this docket under this MPO. This will 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, PacifiCorp must 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 June 4, 2025, at least two individuals at the company to contact for excerpts and their contact information.

¹⁰ *In the Matter of PacifiCorp, dba Pacific Power, 2026 Transition Adjustment Mechanism*, Docket No. UE 450, Modified Protective Order No. 25-195 (May 23, 2025).

The Commission further clarified, and I further adopt here:¹¹

- 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 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.

Finally, I note that one issue was raised here that was not raised in docket UE 450. CUB raised the issue of being able to verify information using Huddle after the close of the proceeding. Huddle is a medium for parties to exchange information during the pendency of the case. A qualified person may only access confidential or highly confidential information in Huddle consistent with the provisions of the applicable protective order. Protective orders typically limit use of the information to participation in the proceeding in which the protective order is issued, absent written permission otherwise, and also limit qualified persons’ retention of such information after the resolution of the proceeding.¹²

¹¹ In addition to these clarifications, I note that I have made changes to conform the MPO to the MPO recently adopted in 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.

¹² See, e.g. General Protective Order at ¶17, 18.

III. ORDER

IT IS ORDERED that PacifiCorp's motion for a modified protective order is granted as modified in this order and set forth in Attachment A.

Made, entered, and effective on May 29, 2025.

Katharine Mapes

Katharine Mapes
Administrative Law Judge



MODIFIED PROTECTIVE ORDER
DOCKET NO. LC 85

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 LC 85.

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.”

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 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) An employee or counsel of the Regulatory Division at the Oregon Citizens' Utility Board; and
 - (b) Counsel for a party. Developers of energy resources that bid into utility RFPs, their counsel, and consultants do not qualify as Qualified Persons in this proceeding.
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 Document 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 Document 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 or Highly Protected Coal Documents 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 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. LC 85

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:		