

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 470

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Request for a General Rate Revision.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

I. INTRODUCTION

On September 14, 2026, I issued a ruling directing PacifiCorp, dba Pacific Power, to file a motion for a modified protective order (MPO) to address confidential materials the disclosure of which to Rachelle McMaster and the *James* class (*James* class) could cause irreparable harm. On September 18, 2026, PacifiCorp filed a motion for an MPO to prevent disclosure of wildfire-litigation-related information to the *James* class. On September 25, 2026, the *James* class filed a response to PacifiCorp's motion. On September 30, 2026, PacifiCorp filed a reply to the *James* class's response.

II. PACIFICORP MOTION AND PROPOSED MPO

PacifiCorp requests an MPO for wildfire-litigation-related information that: (1) falls within the scope of ORCP 36(B)(3) (trial preparation materials); (2) falls within the scope of ORCP 36 C(1) (a trade secret or other confidential research, development, or commercial information); (3) is not publicly available; and (4) is not adequately protected by the General Protective Order. PacifiCorp states this includes liability accruals, legal expenses, internal wildfire risk assessments, information regarding settlements related to wildfires, and payments to litigation counsel and experts. PacifiCorp asserts the harm from releasing this information to the *James* class would be immediate and irreparable.

Under Paragraph 11 of the proposed MPO, Commission employees and Assistant Attorneys General designated to represent the Commission are automatically qualified to access the highly protected information and are bound by the MPO.

Under Paragraph 12, the following persons are qualified to access the protected information by signing the consent to be bound in Appendix B:

- (a) An employee or counsel of PacifiCorp;
- (b) An employee or counsel of Citizens' Utility Board of Oregon that has a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information; and
- (c) Any other party or party representative that has a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information, except a party involved in a wildfire-liability-related dispute against or involving PacifiCorp and such party's counsel, consultants, and employees do not qualify as HPI Qualified Persons under this Modified Protective Order.¹

Under Paragraph 13 of the proposed MPO, the designating party may file an objection under Paragraph 14 within five days of receiving the signed consent to be bound in Appendix B. Paragraphs 7 through 10 set forth the process for challenging a party's designation of information as highly protected under the MPO.

PacifiCorp asserts ORCP 36(B)(3) "prohibits discovery of documents and tangible things prepared in anticipation of litigation or for trial" absent demonstration of a substantial need for the materials.² PacifiCorp argues the Oregon Public Records Law generally exempts public records that pertain to current or anticipated litigation and trade secrets from disclosure. PacifiCorp maintains the proposed MPO strikes a balance between transparency, the intervenors' interests, and the company's interests. PacifiCorp contends the MPO allows appropriate access to the highly protected information while preventing harm and is "narrowly tailored to minimize disruption."³ PacifiCorp argues the MPO is warranted due to the ongoing litigation between the company and the *James* class.

PacifiCorp states it conferred with the other parties to this proceeding regarding the draft motion and proposed MPO and that no party, except the *James* class, took a position. PacifiCorp stated the *James* class requested the company include a statement from the *James* class that indicated the *James* class intended to file a response to the motion.

¹ PacifiCorp Motion for a Modified Protective Order, Appendix A at 3 (Sept. 18, 2026).

² *Id.* at 5.

³ *Id.* at 7.

III. *JAMES* CLASS RESPONSE

The *James* class argues PacifiCorp's proposed MPO goes beyond the directives of my ruling. The *James* class asserts the MPO would allow PacifiCorp to withhold wildfire-litigation-related information and prevent the *James* class from participating fully in these proceedings. The *James* class contends Paragraph 12(c) of the proposed MPO categorically excludes the *James* class whether the class can demonstrate a legitimate and non-competitive need for the information. The *James* class maintains the ruling directing the motion for an MPO did not allow the company to propose an MPO that would allow it to withhold the information from any party PacifiCorp chose. The *James* class argues the MPO is too broad.

The *James* class asserts it "has a legitimate and non-competitive need" for the information that PacifiCorp would withhold through the MPO.⁴ The *James* class maintains PacifiCorp raised the issue of wildfire liability costs when it filed its request for a general rate revision and that the MPO would prevent it from accessing the information it needs to evaluate the company's reasons for seeking a rate increase. The *James* class argues PacifiCorp has not offered any compelling reason for excluding the *James* class instead of relying on the heightened certification for access to protected information under an MPO. The *James* class contends PacifiCorp has already released information publicly that is similar to the information it seeks to protect with the MPO.

The *James* class requests Paragraph 12(c) of the MPO be revised as follows if the Commission grants the motion for an MPO: "(c) Any other party or party representative that has a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information."⁵

IV. PACIFICORP REPLY

PacifiCorp asserts the September 14 ALJ ruling was clear that the MPO was necessary to prevent the *James* class from accessing wildfire-litigation-related and settlement information. PacifiCorp maintains the terms of the MPO that exclude the *James* class are, therefore, appropriate.

⁴ Rachelle McMaster and the *James* Class's Response to PacifiCorp's Motion for Modified Protective Order at 4 (Sept. 25, 2026).

⁵ *Id.* at 7.

PacifiCorp maintains its proposed MPO is narrowly tailored to protect only non-public information related to the wildfire litigations. PacifiCorp asserts it only seeks to designate as highly protected information under the MPO its responses to Staff data requests 002, 057, 366, 367, and 415. PacifiCorp contends if any future testimony or discovery includes wildfire-litigation information meeting the criteria under the MPO, the MPO provides for an objection process.

PacifiCorp argues the material it seeks to protect under the MPO is not publicly available. PacifiCorp states aggregate settlement payment information is public but not the terms and amounts of the individual settlements. PacifiCorp argues the discovery responses it seeks to designate as highly protected information under the MPO include more level of detail than has been provided in public disclosures.

V. DISCUSSION

I find that good cause exists to issue the MPO, which is attached to this Order as Appendix A. In my September 14 ruling, I directed “PacifiCorp to file a motion for an MPO by 3:00 p.m. on September 18, 2026, to address confidential materials that fall within the scope of ORCP 36(C)(l) or the exemptions under ORS 192.345 and 192.355, the disclosure of which to the *James* class could cause irreparable harm to the company.”⁶ This directive contemplated an MPO that denied the *James* class access to certain materials that could cause harm if disclosed to the class. I find PacifiCorp’s language in Paragraph 12(c) would exclude the *James* class from accessing certain information is consistent with that ruling. This exclusion is also consistent with OAR 860-001-0080(3) that permits limiting the persons who may access information under an MPO. I note the Commission has previously entered MPOs that specifically exclude individuals, including attorneys, involved as bidders in a company’s Request for Proposals.⁷ PacifiCorp and the *James* class are involved in ongoing litigation, and as this Commission has previously recognized, a person cannot truly “unknow” information once given access to it. While some of this material may be relevant to the *James* class’s interests in this docket, the danger of harm outweighs those interests in this limited circumstance.⁸

⁶ Ruling at 5 (Sept. 14, 2026).

⁷ See, e.g., *In the Matter of PacifiCorp, dba Pacific Power, 2023 Integrated Resource Plan*, Docket No. LC 82, Order No. 23-213 at 1, Appendix A at 2 (Paragraph 12(b)) (June 15, 2023).

⁸ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket No. LC 77, Order No. 22-128 at 5 (Apr. 25, 2022) (“We are also mindful that participants involved in competitive proceedings may not intend to use protected information for inappropriate competitive purposes, but nonetheless retain knowledge of information that they have worked with in other proceedings and cannot ‘unknow’ those details.”).

The *James* class also raises concerns PacifiCorp is potentially seeking protection for information that the company has already released publicly. This ruling does not address designation of any materials as highly protected under the MPO, and parties may seek to challenge the designation of highly protected information as set forth in the MPO. To the extent the *James* class believes PacifiCorp has improperly designated any material as highly protected information under this MPO, the *James* class may challenge that designation. PacifiCorp is reminded it may only protect information that meets all the criteria of the MPO, including the information is not otherwise available publicly, and any information not meeting the criteria should be unredacted to the extent practicable.

VI. ORDER

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

Made, entered, and effective on Sep 30, 2026.



Sarah Spruce
Administrative Law Judge



MODIFIED PROTECTIVE ORDER

DOCKET NO. UE 470

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 470. Access to Highly Protected Information shall be limited to qualifying persons bound by this Modified Protective Order (“HPI Qualified Persons”).

Designation of Protected Information and “Highly Protected Information”:

2. Any party may designate as Highly Protected Information any wildfire-litigation-related information the party reasonably determines:
 - (a) Falls within the scope of ORCP 36 B(3) (trial preparation materials);
 - (b) Falls within the scope of ORCP 36 C(1) (a trade secret or other confidential research, development, or commercial information);
 - (c) Is not publicly available; and
 - (d) 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. 26-_____

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. For discovery, Highly Confidential Information may be provided via secure database on Huddle or a future Commission discovery portal. Highly Protected versions of filings and Highly Protected Information not distributed by the Filing Center or exchanged through Huddle or a future Commission portal shall be provided to HPI Qualified Persons in a password protected and encrypted electronic ZIP file or through a secure cloud-based storage service.
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 B(3) or 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 B(3) or 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 Administrative Law Judge (“ALJ”). The objection need only identify the information in dispute and certify that reasonable efforts to achieve informal resolution have failed.
9. Within five (5) 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 covered by ORCP 36 B(3) or ORCP 36 C(1), including how it 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 (5) business days of service of an objection. The designating party may file a sur-reply within three (3) business days of service of a response. The ALJ will make all reasonable efforts to resolve the matter within ten (10) business days of service of the last filing.

Access to Highly Protected Information

11. Only HPI Qualified Persons may access Highly Protected Information designated by another party. Qualified Persons under General Protective Order 23-132 are not HPI Qualified Persons under this Modified Protective Order except as provided in Paragraphs 11 to 13 herein.

Persons automatically bound by this Modified 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 by signing the Consent to be Bound and Signatory Page for Highly Protected Information, Appendix B, are:
- (a) An employee or counsel of PacifiCorp;
 - (b) An employee or counsel of Citizens' Utility Board of Oregon that has a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information; and
 - (c) Any other party or party representative that has a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information, except a party involved in a wildfire-liability-related dispute against or involving PacifiCorp and such party's counsel, consultants, and employees do not qualify as HPI Qualified Persons under this Modified Protective Order.
13. Within five (5) business days of receiving a copy of Appendix B, the designating party must file an objection under Paragraph 14 or access will be provided.

Objection to Access to Protected Information:

14. All HPI Qualified Persons 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 HPI Qualified Person, or objects to a person seeking qualification under Paragraph 12, 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 (5) business days of service of an objection. The ALJ will make all reasonable efforts to resolve the matter within ten (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.

Highly Protected versions of filings or Highly Protected Information that has been previously filed or exchanged shall be provided to HPI Qualified Persons in a password protected and encrypted electronic ZIP file, uploaded to a Huddle file folder designated "Highly Protected", or uploaded to a future Commission discovery portal as a "Highly Confidential Attachment".

Use of Protected Information:

16. All HPI Qualified Persons must take reasonable precautions to keep Highly Protected Information secure. HPI Qualified Persons may reproduce Highly Protected Information only to the extent necessary to participate in these proceedings. A HPI Qualified Person may discuss Highly Protected Information obtained under this order only with other HPI

Qualified Persons who have obtained the same information under this order.

17. Without the written permission of the designating party, any HPI Qualified Person may not disclose Highly Protected Information for any purpose other than participating in these proceedings.
18. Nothing in this Modified 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.
19. 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:

20. The Commission will preserve the designation of information as Highly Protected Information for a period of five (5) 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 (2) weeks prior to the release of Highly Protected Information.

CONSENT TO BE BOUND AND SIGNATORY PAGE
DOCKET NO. UE 470

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.

I have 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: _____