

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1368

In the Matter of

PACIFICORP, dba PACIFIC POWER

Request for Approval of a 2008R-1  
Solicitation Process for New Renewable  
Resources.

**SPECIAL  
PROTECTIVE ORDER**

**DISPOSITION: MOTION FOR ADDITIONAL  
PROTECTION GRANTED**

Bids to Pacific Power's amended 2008R-1 RFP were submitted on February 27, 2009. On April 24, 2009, Pacific Power asked the Commission to acknowledge a Final Shortlist of Bidders to the 2008R-1 RFP. In doing so, Pacific Power referenced highly confidential work papers supporting the Initial Shortlists and Final Shortlist selection decisions. On April 27, 2009, PacifiCorp, dba Pacific Power (Pacific Power or Company), filed a motion with the Public Utility Commission of Oregon (Commission) for additional protection.

Pacific Power requests an additional protective order that would allow qualified signatories to review highly commercially sensitive, non-public information related to Pacific Power's solicitation for new renewable resources (2008R-1 RFP), including the Initial Shortlists and Final Shortlist work papers, bid scoring and evaluation results, and any other highly sensitive, non-public information submitted by parties and the Oregon independent evaluator (IE) in this proceeding. Pursuant to paragraph 16 of Appendix A, Pacific Power asserts, "that in order to maintain the competitive integrity of the 2008R-1 RFP and the bid evaluation process, the highly sensitive, non-public information should be disclosed in Oregon only to the Commissioners, Commission Staff, the IE and non-bidding parties who execute a modified protective order."<sup>1</sup>

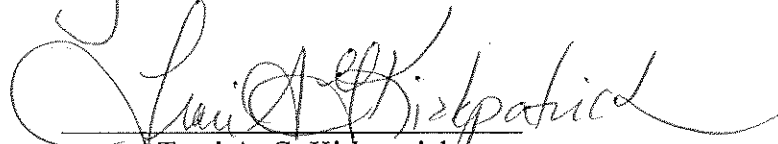
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<sup>1</sup> Pacific Power's Motion for Additional Protection, p. 2.

**ORDER**

IT IS ORDERED that the Special Protective Order, attached as Appendix A, shall govern the disclosure of information deemed to be Non-Public Information in this case.

Made, entered, and effective on May 4, 2009.



Traci A. G. Kirkpatrick  
Administrative Law Judge



A party may appeal this order to the Commission pursuant to OAR 860-014-0091.

**SPECIAL PROTECTIVE ORDER**  
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**Scope of this Order-**

1. This Special Protective Order governs the acquisition and use of “Non-Public Information” in this proceeding.

2. This Special Protective Order is intended to supplement, not supersede, Protective Order No. 08-213.

**Definitions-**

3. “Non-Public Information” is information that falls within the scope of ORCP 36(C)(7) (“a trade secret or other confidential research, development, or commercial information”) and includes bidding information, as well as detailed scoring and evaluation results, as discussed in Guidelines 11 and 12 of Order No. 06-446.

4. A “qualified person” is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Non-Public Information;
- b. A Commissioner or Commission staff;
- c. A person qualified pursuant to paragraph \_\_\_ who is a non-bidding party. This includes parties and their employees.

**Designation of Non-Public Information-**

5. A party providing Non-Public Information shall inform other parties that the material has been designated Non-Public Information by placing the following legend on the information:

NON-PUBLIC INFORMATION  
SUBJECT TO SPECIAL PROTECTIVE ORDER

**Information Given to the Commission-**

6. Non-Public Information that is filed with the Commission or its staff shall be printed on green paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the

Commission. **Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container.** The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER NO. \_\_\_\_\_  
AND CONTAINS NON-PUBLIC INFORMATION. THE  
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED  
PERSONS AS DEFINED IN THE ORDER.

7. The Commission's Administrative Hearings Division shall store the Non-Public Information in a locked cabinet dedicated to the storage of information subject to protective order.

**Disclosure of Non-Public Information-**

8. Non-bidding parties desiring receipt of Non-Public Information shall sign the Consent to be Bound Form attached as Appendix B. This requirement does not apply to the Commission staff. Non-Public Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 3. When feasible, Non-Public Information shall be delivered to counsel. In the alternative, Non-Public Information may be made available for inspection and review by qualified persons in a place and time agreeable to the parties or as directed by the Administrative Law Judge.

9. Qualified persons may disclose Non-Public Information to any other qualified person, unless the Company protests as provided in Section 11.

10. To become a qualified person under paragraph 3(e), a person must:

- a. Read a copy of this Special Protective Order;
- b. Execute a statement acknowledging that the order has been read and agreeing to be bound by the terms of the order;
- c. Date the statement;
- d. Provide a name, address, employer, and job title; and
- e. If the person is a consultant or advisor for a party, provide a description of the nature of the person's consulting or advising practice, including the identity of his/her current, past, and expected clients.

Counsel shall deliver a copy of the signed statement including the information in (d) and (e) above to Pacific Power and to all parties of record. Such notification may be made via e-mail or facsimile.

11. All qualified persons shall have access to Non-Public Information, unless the Pacific Power protests as provided in this paragraph. To restrict the qualified person(s) from accessing specific Non-Public Information, the Company must provide written notice to the qualified person(s) and counsel for the party associated with the qualified person(s) as soon as the party becomes aware of reasons to restrict access. The parties must promptly confer and

attempt to resolve any dispute over access to Non-Public Information on an informal basis before filing a motion with the Administrative Law Judge. If the dispute cannot be resolved informally, either party may file a motion with the Administrative Law Judge for resolution. Either party may also file a motion if the other party does not respond within five days to a request to resolve the dispute. A motion must describe in detail the intermediate measures, including selected redaction, explored by the parties and explain why such measures do not resolve the dispute. After receipt of the written notice as required in this paragraph, the specific Non-Public Information shall not be disclosed to the qualified person(s) until the issue is resolved.

#### **Preservation of Confidentiality-**

12. All persons who are given access to Non-Public Information by reason of this order shall not use or disclose the Non-Public Information for any purpose other than the approval and acknowledgement of the 2008R-1 RFP and to the conduct of related cost recovery proceedings, and shall take all reasonable precautions to keep the Non-Public Information secure. Disclosure of Non-Public Information for purposes of business competition is strictly prohibited.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce Non-Public Information only to the extent necessary for the preparation and conduct of this use. Qualified persons may disclose Non-Public Information only to other qualified persons associated with the same party.

#### **Duration of Protection-**

13. The Commission shall preserve the confidentiality of Non-Public Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of Pacific Power. The Commission shall notify the Company at least two weeks prior to the release of Non-Public Information.

#### **Destruction After Proceeding-**

14. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Non-Public Information to the extent reasonably necessary to maintain a file of this proceeding or to comply with requirements imposed by another governmental agency or court order. The information retained may not be disclosed to any person. Any other person retaining Non-Public Information or documents containing such Non-Public Information must destroy or return it to Pacific Power within 90 days after final resolution of this proceeding unless the Company consents, in writing, to retention of the Non-Public Information or documents containing such Non-Public Information. This paragraph does not apply to the Commission or its Staff.

**Appeal to the Presiding Officer-**

15. If a party disagrees with the designation of information as Non-Public Information, the party shall contact Pacific Power and attempt to resolve the dispute on an informal basis. If the parties are unable to resolve the dispute, the party desiring to use the information may move for exclusion of the information from the protection conferred by this order. The motion shall:

- a. Specifically identify the contested information; and
- b. Assert that the information does not fall within ORCP 36(C)(7) and state the reasons therefor.

The party resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the party resisting disclosure does not respond to the motion within ten (10) calendar days, the challenged information shall be removed from the protection of this order.

The information shall not be disclosed pending a ruling by the Administrative Law Judge on the motion.

**SIGNATORY PAGE**  
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**I. Consent to be Bound.**

This Special Protective Order governs the use of "Non-Public Information" in this proceeding.

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

By: \_\_\_\_\_  
Signature & Printed Date

**II. Persons Qualified pursuant to Paragraph 10.**

I have read the Special Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 10.

By: \_\_\_\_\_  
Signature & Printed Date

By: \_\_\_\_\_  
Signature & Printed Date

By: \_\_\_\_\_  
Signature & Printed Date

By: \_\_\_\_\_  
Signature & Printed Date