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April 21, 2020

**VIA ELECTRONIC FILING**

PUC Filing Center  
Public Utility Commission of Oregon  
P.O. Box 1088  
Salem, OR 97308-1088

**Re: UE 374 - In the Matter of PACIFICORP, dba PACIFIC POWER, Request  
for a General Rate Revision.**

Attached for filing in the above-referenced docket is PacifiCorp's Motion for Modified Protective Order.

Please contact this office with any questions.

Sincerely,

Wendy McIndoo  
Office Manager

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 374**

In the Matter of  
PACIFICORP d/b/a PACIFIC POWER,  
Request for a General Rate Revision.

**MOTION FOR MODIFIED  
PROTECTIVE ORDER**

**Expedited Consideration Requested**

Under OAR 860-001-0080(3), and OAR 860-001-0420, PacifiCorp d/b/a Pacific Power (PacifiCorp) moves the Public Utility Commission of Oregon (Commission) for the entry of a Modified Protective Order to supplement the Commission’s General Protective Order in this proceeding.<sup>1</sup> For the reasons outlined below, good cause exists to issue the proposed Modified Protective Order, attached as Appendix A, to provide additional protection to highly confidential information in this general rate case. PacifiCorp seeks expedited entry of a Modified Protective Order to allow it to promptly respond to pending discovery from Sierra Club, an intervenor in this case.

**I. BACKGROUND**

On February 14, 2020, PacifiCorp filed an application for a general rate increase. Several parties intervened and initiated discovery. One party, Sierra Club, issued several data requests for information that PacifiCorp regards as highly confidential. Specifically, Sierra Club requested PacifiCorp’s co-ownership contracts for coal facilities, an EPC agreement, and highly sensitive financial analysis. The parties agreed to special handling limitations under which Sierra Club reviewed the documents at PacifiCorp’s offices using

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<sup>1</sup> *In the Matter of PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, Docket No. UE 374, Order No. 20-040 (Feb. 11, 2020).

video-conferencing and screen-sharing technology. Based on its review, Sierra Club has requested copies of certain pages of this information for reference and inclusion in its testimony.

Because of the highly confidential nature of the information requested, PacifiCorp seeks additional protections beyond those contained in the Commission's General Protective Order. The goal of the proposed protections is to limit dissemination of highly confidential information, to ensure that the parties receiving highly confidential information treat it with the utmost care, and to limit the forms of duplication and transmission of such information so that it does not fall into the possession of market competitors or the general public. This approach will allow the Commission and the parties the opportunity to fully review highly confidential information, while providing strong protection against unauthorized disclosure. PacifiCorp has conferred with Sierra Club about this Motion for Modified Protective Order, and Sierra Club does not object to entry of a Modified Protective Order.

## **II. REQUEST FOR ADDITIONAL PROTECTION**

OAR 860-001-0080(3)(a) contains five requirements for seeking a modified protective order, each of which are addressed below.

### **A. Parties and Exact Nature of the Information Involved.**

The parties to this case are Commission Staff (Staff), Oregon Citizens' Utility Board (CUB), the Alliance of Western Energy Consumers (AWEC), Sierra Club, Small Business Utility Advocates (SBUA), Fred Meyer Stores, Inc. (Fred Meyer), ChargePoint, Inc. (ChargePoint), Tesla, Klamath Water User Association (KWUA), and Vitesse, LLC (Vitesse).

As noted above, Sierra Club has requested highly confidential information related to PacifiCorp's coal generation resources, including joint ownership agreements, an EPC contract, and highly sensitive financial analysis. Such information requires additional protection beyond the General Protective Order because disclosure would harm PacifiCorp and its customers by: (1) putting PacifiCorp at a commercial disadvantage in its ownership and operation of its coal generation resources; and (2) violating third-party confidentiality provisions covering many of the documents.

It is possible that other highly confidential information will be requested by parties in discovery during the course of this proceeding. With a Modified Protective Order in place, PacifiCorp will be able to expedite its response to such discovery.

**B. Legal Basis for the Claim that the Information is Protected under ORCP 36(C)(1).**

The proposed Modified Protective Order is designed to cover “trade secret” information protected under ORCP 36(C)(1). ORCP 36(C)(1) provides for limitations on the disclosure of “trade secret[s] or other confidential research, development, or commercial information.” Oregon’s Uniform Trade Secrets Act defines a “trade secret” as information, including cost data, that: (a) derives independent economic value, actual or potential, from not being generally known to the public or to other person who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>2</sup>

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<sup>2</sup> See ORS 646.461 to 646.475.

In docket UE 356, the 2020 Transition Adjustment Mechanism, the Commission entered a modified protective order to cover similar information—highly sensitive contractual and financial information regarding PacifiCorp’s coal generation resources.<sup>3</sup>

**C. Exact Nature of the Relief Requested.**

The terms of the Modified Protective Order are narrowly tailored and intended to apply only to PacifiCorp’s most sensitive information. The proposed Modified Protective Order will allow the review of Highly Protected Information to qualified parties and recognizes that there is certain Highly Protected Information that parties will share only with their attorneys, with the exception of non-attorneys at Staff and CUB. The Modified Protective Order also sets up a process by which an expert may seek to be qualified to review specific Highly Protected Information. The Commission has entered modified protective orders with virtually identical provisions in the past.<sup>4</sup>

Also consistent with past Commission decisions, the Modified Protective Order will require interested parties to review Highly Protected Information at PacifiCorp’s offices.<sup>5</sup> Because of the ongoing COVID-19 pandemic and the related limitations on travel and gatherings, however, PacifiCorp is now conducting these reviews using remote conferencing and screen-sharing programs. As necessary and reasonable, a party may request copies of limited, specific portions of the Highly Protected Information for reference or inclusion in

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<sup>3</sup> *In the Matter of PacifiCorp, dba Pacific Power, 2020 Transition Adjustment Mechanism*, Docket No. UE 356, Order No. 19-113 (Apr. 3, 2019).

<sup>4</sup> *See, e.g., Id.*

<sup>5</sup> *See, e.g., In the Matter of PacifiCorp, Application for Approval of Final Draft 2017R Request for Proposals*, Docket No. UM 1845, Order No. 18-080 (Mar. 8, 2018) (granting motion for reconsideration of Modified Protective Order in part, but affirming PacifiCorp’s procedures for on-site review).

testimony, and PacifiCorp will provide copies under the terms of the Modified Protective Order.

The Modified Protective Order also requires that Highly Protected Information be maintained in a manner distinct from non-confidential information and from Protected Information, by requiring that Protected Information and Highly Protected Information be printed on a different color of paper. Like Protected Information, Highly Protected Information may not be used or disclosed for any purpose other than participation in this proceeding. Finally, the Modified Protective Order prohibits electronic copying or distribution of Highly Protected Information.

**D. Specific Reasons Requested Relief is Necessary.**

Entry of a Modified Protective Order with additional protections will allow PacifiCorp to make information available to the parties in a manner consistent with the fact that it is highly sensitive commercial information. Granting the requested additional protection also will significantly limit the risk of an inadvertent breach of confidentiality, which could adversely affect PacifiCorp and its customers. The General Protective Order is insufficient because it does not provide adequate safeguards against the disclosure of highly confidential information. Reliance on the General Protective Order could also delay discovery and interfere with the expeditious handling of highly confidential information.

**E. Intermediate Measures Explored and Why these are Insufficient.**

PacifiCorp has already used the intermediate measure of allowing parties to review Highly Protected Information subject to special, informal handling restrictions. A Modified Protective Order is now necessary to address follow-up requests for copies of specific portions of Highly Protected Information for use in a party's testimony or at hearing.

### III. CONCLUSION

For the foregoing reasons, PacifiCorp respectfully requests entry of the Modified Protective Order attached as Appendix A in this docket.

Respectfully submitted this 21st day of April 2020.



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Attorneys for PacifiCorp

**APPENDIX A**

PROPOSED MODIFIED PROTECTIVE ORDER



**MODIFIED PROTECTIVE ORDER**  
**Docket No. UE 374**

**Scope of this Order:**

1. This order governs the acquisition and use of “Highly Protected Information” produced or used by any party to these proceedings. General Protective Order No. 20-040 governs the acquisition and use of “Protected Information.”

**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); and
- (b) Is not publicly available; and
- (c) Is extremely commercially sensitive and requires additional restrictions on who may access the information than that provided under the Commission's 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 GENERAL PROTECTIVE ORDER NO. 20-\_\_\_**

The party should make reasonable efforts to designate as Highly Protected Information only the portions of the information covered by the definition in Paragraph 2 of this order.

4. Each page of a document containing Highly Protected Information filed with the Commission or provided to Qualified Persons under this order must be printed on green paper and placed in a sealed envelope or other appropriate container. Only the portions of a document that fall within the above definitions may be placed in the envelope/container. The envelope/container must bear the legend:

**THIS ENVELOPE IS SEALED UNDER ORDER NO. 20-\_\_\_ AND CONTAINS HIGHLY PROTECTED INFORMATION. THE INFORMATION MAY BE SHOWN ONLY TO PERSONS QUALIFIED TO ACCESS HIGHLY PROTECTED INFORMATION AS DEFINED IN THE ORDER.**

5. Highly Protected Information disclosed by a designating party to a person qualified to access Highly Protected information through informal discovery or by means of the Commission's Huddle website will be marked “Highly Protected Information” and uploaded to a file folder designated “highly protected” in Huddle, if applicable.

6. 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.

7. 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:**

8. 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 bears the burden of showing that the “Highly Protected Information” designation is necessary. Any party may request that the ALJ hold a conference to help resolve disputes about proper designation.

9. 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.

10. 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.

11. 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 10 business days of service of the last filing.

**Access to Highly Protected Information:**

12. 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.

13. Persons qualified to access Highly Protected Information upon signing the Signatory Page for Highly Protected Information, Appendix B, are:

- (a) An employee or counsel of the Regulatory Division at the Oregon Citizens' Utility Board; and
- (b) Counsel for a party.

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.

14. A party bound by the General Protective Order No. 20-040 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 16.

15. Access to Highly Protected Information will be provided to Qualified Persons only at PacifiCorp's offices. During the COVID-19 pandemic, PacifiCorp will facilitate access to the Highly Protected Information using video-conference and screen-sharing technology until such time as all parties determine that it is reasonably safe to review the documents in person. Qualified persons are not authorized to, and shall not make, 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 only. 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. After reviewing the Highly Protected Information at PacifiCorp's offices, if a party reasonably believes that a limited, specific part of a document containing Highly Protected Information is necessary for inclusion in testimony in this proceeding or for use at hearing, the party may request a copy. In response to such a request, PacifiCorp will prepare a copy of the required portion of the document and provide it to that party.

**Objection to Access to Highly Protected Information:**

16. 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, the designating party must provide the Qualified 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.

17. 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 5 business days of service of an objection. The ALJ will make all reasonable efforts to resolve the matter within 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.

**Use of Highly Protected Information:**

18. All Qualified Persons must take reasonable precautions to keep Highly Protected Information secure. Qualified Persons may request copies of Highly Protected Information in accordance with paragraph 15 of this order only to the extent necessary to participate in these proceedings. A Qualified Person may discuss Highly Protected Information obtained under this order only with other Qualified Persons who have obtained the same information.

19. 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.

20. 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.

21. 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:**

22. 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.

**APPENDIX B**

**Signatory Page for Highly Protected Information  
Docket No. UE 374**

**Persons Qualified pursuant to Paragraph 13, 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 need for the Highly Protected 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: \_\_\_\_\_

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

Address: \_\_\_\_\_

Employer: \_\_\_\_\_

Job Title: \_\_\_\_\_

**APPENDIX C**  
**QUALIFICATION OF OTHER PERSONS UNDER MODIFIED PROTECTIVE ORDER**  
**Docket No. UE 374**

**Persons Seeking Qualification under Paragraph 14 to access Highly Protected Information:**

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 Protected 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>		