

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

PACIFIC POWER & LIGHT
COMPANY,

Petition For a Rate Increase Based on a
Modified Commission Basis Report, Two-
Year Rate Plan, and Decoupling
Mechanism.

DOCKET NO. UE-152253

PACIFIC POWER & LIGHT
COMPANY'S
MOTION FOR AMENDED
PROTECTIVE ORDER WITH
HIGHLY CONFIDENTIAL
PROVISIONS

I. INTRODUCTION

1 Pacific Power & Light Company (Pacific Power or Company), a division of PacifiCorp, files this Motion for Amended Protective Order with Highly Confidential Provisions. Until now, the standard protective order has been sufficient to govern the discovery and use of proprietary and confidential documents in this proceeding.¹ Sierra Club, a party to this case, just requested discovery of highly confidential information, which requires greater protection than the standard protective order provides. Under WAC 480-07-423(2), Pacific Power files this motion for an amendment to the standard protective order so that Pacific Power can provide access to and protection of this highly confidential information.

2 To facilitate discovery, Pacific Power requests expedited consideration of this motion. The Company has conferred with the parties and Sierra Club, Staff, Boise White Paper, L.L.C., Public Counsel, and the Northwest Energy Coalition do not object. The Energy Project did not respond.

¹ Order 02, Protective Order (Dec. 8, 2015).

II. RELIEF REQUESTED

3 Pacific Power respectfully requests that the Commission issue an amended standard protective order that includes the following “highly confidential” provisions:

- Pacific Power will be permitted to designate information as “highly confidential” in its testimony, exhibits, responses to data requests, and briefing in this proceeding, as well as at hearing. At this time, the only information that Pacific Power will designate as “highly confidential” is the Company’s engineering, procurement, and construction services (EPC) contract, including the Full Notice to Proceed (FTNP), for the selective catalytic reduction (SCR) systems for Units 3 and 4 of the Jim Bridger generating plant.
- For all persons or parties having access to highly confidential information, copying and handling of such information shall be limited in order to reduce the risk of inadvertent disclosure of that information.

Pacific Power is submitting as Exhibit A to this motion a proposed form of amended protective order with highly confidential provisions.

III. STATEMENT OF FACTS

4 On April 11, 2016, Sierra Club submitted its fifth set of data requests to Pacific Power, which request highly confidential information related to the Jim Bridger SCRs. In particular, Sierra Club has requested the EPC contract and FNTTP for the SCRs for Units 3 and 4 of the Jim Bridger generating plant. Sierra Club’s data request acknowledges that this information may be deemed highly confidential and subject to additional protections beyond the standard protective order.²

² See Sierra Club’s Fifth Set of Data Requests to PacifiCorp [Confidential] (April 11, 2016).

5 In very limited circumstances in this case, Pacific Power has deemed information sought by parties as “highly confidential” information. In an effort to facilitate discovery, Pacific Power has worked with the requesting party and made this information available for on-site inspection, including the EPC contract. This process has worked until now, but Sierra Club has indicated that on-site inspection of the EPC contract is not sufficient. Therefore, it is necessary to amend the protective order at this time to allow for the use and protection of highly confidential information.

6 The Commission’s standard protective order is sufficient to protect the materials in Pacific Power’s filing that have been marked “confidential” and the amended protective order will continue to protect that information.

7 As detailed in the Declaration of Mr. Chad A. Teply in Support of Pacific Power’s Motion for Amended Protective Order with Highly Confidential Provisions submitted with this motion, the EPC contract (including the FNTP) require enhanced protections from disclosure. This information is highly sensitive commercial information related to contract terms negotiated by Pacific Power. This information, if released to current or potential counterparties or competitors, could cause significant competitive harm to Pacific Power in its efforts to obtain the best price and terms on behalf of customers in Washington and other Pacific Power jurisdictions. Mr. Teply’s declaration provides further details in support of Pacific Power’s concerns.

8 Pacific Power has made a concerted effort to minimize the use of the “highly confidential” designation. The fact that now, five months into this proceeding, Pacific Power is requesting an amendment to the protective order demonstrates that Pacific Power only does so as an absolute necessity.

IV. STATEMENT OF ISSUE

9 This Motion for Amended Protective Order with Highly Confidential Provisions presents the following issue:

Should the Commission amend the protective order to create a separate designation and a higher degree of protection for certain documents asserted by parties to be highly confidential?

V. EVIDENCE RELIED UPON

10 In support of the relief requested in this motion, Pacific Power relies upon the Declaration of Mr. Teply in Support of Pacific Power’s Motion for Amended Protective Order with Highly Confidential Provisions, which has been submitted with this motion. Mr. Teply’s declaration describes the information that Pacific Power seeks to protect with the “highly confidential” designation and the harm that would result from disclosure of such information.

VI. AUTHORITY AND ARGUMENT

11 WAC 480-07-423(2) provides for entry of a protective order with highly confidential provisions to protect information if the lack of enhanced restrictions on access to such information “imposes a highly significant risk of competitive harm.”³

12 There is ample Commission precedent for the entry of a protective order with a “highly confidential” designation. The Commission has amended its standard protective order to allow for the designation of highly confidential documents under the following circumstances: (1) it is likely that proprietary and confidential information will be required to resolve the issues in a proceeding; (2) a significant risk exists that confidential information might become available to persons who have no legitimate need for such

³ WAC 480-07-423(3)(b).

information; (3) that injury to the information provider or third parties could result; and (4) the entry of the protective order will facilitate discovery.⁴ Those same elements support the issuance of an amended protective order in this proceeding.

13 The EPC contract is precisely the type of commercially sensitive information that is intended to be eligible for “highly confidential” protection.⁵ Competitors and counterparties could use the EPC contract as a benchmark and then negotiate already knowing the terms and conditions to which Pacific Power has previously agreed. This would disadvantage Pacific Power and give competitors and counterparties an advantage that would increase Pacific Power’s contract costs to the detriment of the Company and its customers.

14 Disclosure of this information would likely be impossible to remedy and imposes a highly significant risk of competitive harm. Pacific Power’s concern is not speculative, but is based on actual events in this proceeding. Just recently, Sierra Club inadvertently emailed “confidential” material to parties who should not have had access to that information.⁶ While Sierra Club took immediate steps to correct its error, a similar disclosure of the EPC contract would impose a significant risk of competitive harm.

15 Imposing reasonable restrictions on handling and reproducing the EPC contract is also consistent with the public policy of Washington, which provides strong protection to competitively-sensitive information. The Legislature has declared that the protection of

⁴ See *WUTC v. Puget Sound Energy*, Docket UG-151663, Order 02 (Sept. 9, 2015); *WUTC v. Puget Sound Energy*, Docket No. UE-111048 and UE- UG-111049 (consolidated), Order 01 (June 17, 2011); *WUTC v. Puget Sound Energy*, Docket No. UE-090704 and UE-090705 (consolidated), Order 03 (June 23, 2009).

⁵ WAC 480-07-423(3)(b).

⁶ This material was contained in the confidential cross-answering testimony of Jeremy Fisher on behalf of the Sierra Club, which was served on April 7, 2016. Later that day, Kadie McShirley of Sierra Club sent an email to the UE-152253 service list stating: “It appears parties not signatories to the protective order may have received the earlier confidential attachments. If you received the earlier email in error, please destroy the confidential information.”

confidential commercial information “promotes business activity and prevents unfair competition” and that the “confidentiality of such information be protected and its unnecessary disclosure be prevented.”⁷

16 Pacific Power seeks additional protection for the EPC contract while still permitting each party reasonable access to this “highly confidential” information. Pacific Power believes that allowing each party access to the information, but with a heightened standard of protection, fairly balances the risks of significant competitive harm to Pacific Power and the need for parties to undertake discovery in this proceeding.

17 Finally, Pacific Power requests that copying and access to all “highly confidential” information be restricted as set forth in Pacific Power’s proposed order to reduce the risk of inadvertent disclosure of “highly confidential” information. Such restrictions are consistent with the restrictions that were imposed with respect to “highly confidential” information in a recent Puget Sound Energy, Inc. proceeding.⁸

VII. CONCLUSION

18 For the reasons set forth above, Pacific Power respectfully requests that the Commission enter an amended standard protective order in this case with enhanced

⁷ See RCW 4.24.601,

⁸ See *WUTC v. Puget Sound Energy*, Docket UG-151663, Order 02 (Sept. 9, 2015).

protection of highly confidential information, in the form provided as Exhibit A to this motion.

Dated this 14th day of April, 2016.



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