

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

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In the Matter of the Joint Application of )  
PACIFICORP AND NUCOR STEEL for Approval )  
of an Electric Service Agreement. )

DOCKET NO. 02-035-13

PROTECTIVE ORDER

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ISSUED: November 18, 2002

By the Commission:

On November 14, 2002, PacifiCorp ( the "Company") filed a motion requesting that the Commission issue a Protective Order in the above-entitled proceeding. In its motion, PacifiCorp stated that the entry of its proposed Protective Order would expedite the production of documents and other information and would afford necessary protection of private financial information of third persons and of commercially valuable, confidential, trade secret and business information. The Commission finds that sufficient grounds exist for entry of the following Protective Order:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. (a) *Definition of Confidential Information.* For purposes of this Order, "Confidential Information" shall be any document, data, information, study or other similar materials that are claimed by PacifiCorp, its affiliates or other parties to this proceeding to constitute its trade secrets; its confidential or proprietary commercial and financial information; or confidential individual financial information of other persons or entities. For purposes of this Order, notes made pertaining to, or as a result of a review of, Confidential Information shall be considered Confidential Information and subject to the terms of this Order.

(b) *Identification and Limitations of Use of Confidential Information.* Confidential information furnished or made available in response to interrogatories, requests for information, subpoenas, depositions, "data requests," requests for admissions or other methods of discovery shall be furnished and treated by all persons accorded access to the information pursuant to the terms of this Order. Such Confidential Information shall neither be used nor disclosed except in accordance with this Order. All material claimed by a party or affiliate to be Confidential Information shall be so marked by stamping it with a designation indicating its confidential nature.

(c) *Use of Confidential Information and Persons Entitled to Review.* All Confidential Information made available pursuant to this Order shall be served initially solely to counsel for the requesting party and shall not be used or disclosed except for purposes of this proceeding. Access to any specific Confidential Information to persons designated by the parties as being their experts and consultants in this proceeding may be authorized by that party's counsel. Any member of the Public Service Commission and its staff may have access to any Confidential Information made available pursuant to this Order, and shall be bound by the terms of this Order.

(d) *Nondisclosure Agreement.* Prior to granting access to Confidential Information under paragraph 1(c), counsel for the party whose expert or consultant seeks review of the Confidential Information shall deliver a copy of this Order to that person, who shall agree to comply with and be bound by this Order by executing the Nondisclosure Agreement attached as Exhibit A to this Order. The agreement shall contain the signatory's full name, employer, permanent business address, and the name of the party for whom the signatory is serving as expert or consultant. The executed agreement shall be delivered to counsel for the providing party and the Commission. The members of the Commission, its advisory staff and the court reporter may have access to any Confidential Information made available pursuant to this Order without executing Exhibit A.

(e) *Inspection and Review of Highly Sensitive Information.* In response to a request for information that the party from whom the information is requested regards as highly sensitive and highly confidential, that party shall have the right to decline to provide copies of the information to the requesting party's counsel, experts and consultants. Such information shall, however, be made available for inspection and review by the requesting party's counsel, consultants or experts at a place and time mutually agreed upon by the parties. When copies of the Confidential Information are not provided under this paragraph, persons reviewing the information may make notes regarding it for reference purposes only. Such notes may not be a verbatim or substantive transcript of the Confidential Information.

2. (a) *Challenge to Confidentiality.* If parties are unable to agree that certain information constitutes Confidential Information, the party objecting to the confidentiality claim shall submit the matter to the Commission for its review and resolution. When the Commission rules on the question of whether any information submitted to them for review and determination are Confidential Information, the Commission will enter an order resolving the issue.

(b) *Removal from Protection.* Upon 10 days' prior written notice, a party may seek to have documents that have been designated as Confidential Information, or which were accepted into the sealed record in accordance with this Order, removed from the protective requirements of this Order or from the sealed record and placed in the public record. If the confidential or proprietary nature of this information is challenged, resolution of the issue shall be made by the Commission after *in camera* proceedings, at which only those persons duly authorized under this Order to have access may be present. The record of such *in camera* hearings shall be marked "**CONFIDENTIAL- SUBJECT TO PROTECTIVE ORDER IN CASE NO. 02-035-13**". It shall be transcribed only upon agreement by the parties or order of the Commission and, in that event, shall be separately bound, segregated, sealed and withheld from inspection by any person not bound by the terms of this Order, unless and until released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to an order of the Commission. If the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this Order or from the protection of the sealed record and if the providing party indicates its intent to seek a stay or other relief, no party may disclose such information or use it in any public record for 10 business days.

3. (a) *Receipt into Evidence.* Prior to the use of, or substantive reference to, any Confidential Information as evidence, the party intending to use such information shall provide written notice of that intention to the counsel for the providing party. The party intending to use Confidential Information shall use its best efforts to provide 10 days' prior notice of the use of such information, and in no event shall provide less than three business days' prior notice. The requesting party and the providing party shall make a good-faith effort to reach an agreement so that the information can be used in a manner that will not reveal its confidential nature. If such efforts fail, the providing party shall separately designate to the requesting party those portions, if any, of the documents to be offered or referenced on the record that contain Confidential Information. At least one day prior to the use of the Confidential Information, the providing party shall provide the Commission and counsel for the other parties with a written description of the portions of the documents so designated. The portions of the documents so designated shall be placed in the sealed record. Only one copy of documents designated by the providing party to be placed in the sealed record shall be made and only for that purpose. Otherwise, parties shall make only general reference to Confidential Information in these proceedings.

(b) *Seal.* While in the custody of the Commission, these materials shall be marked "**CONFIDENTIAL- SUBJECT TO PROTECTIVE ORDER IN CASE NO. 02-035-13**," and due to their confidential nature, they shall not be considered as records in the possession of or retained by the Commission within the meaning of the open meetings or public records statutes.

(c) *In Camera Hearing.* Any Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an *in camera* hearing, attended only by persons authorized to have access to the Confidential Information under this Order. Similarly, cross-examination on, or substantive references to, Confidential Information, as well as that portion of the record containing references to Confidential Information, shall be marked and treated as provided below.

(d) *Appeal.* Sealed portions of the record in this proceeding may be forwarded under seal as designated in this Order to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations for the information and use of the court.

(e) *Return*. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for the providing party within 30 days after final settlement or conclusion of this matter, including applicable administrative or judicial review. To facilitate their ongoing regulatory responsibility, the Commission and the Division may retain Confidential Information obtained under this Order subject to the other terms of this Order. At least six business days prior to the use of any of the retained Confidential Information in any subsequent case, the Division shall provide written notice to counsel for the party providing the information.

4. *Use in Pleadings*. Where reference to Confidential Information in the sealed record is required in pleadings, cross-examinations, briefs, argument or motions, it shall be by citation of title, exhibit number or some other nonconfidential description. Any further use of, or substantive references to, Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit A. All the protections afforded in this Order apply to materials prepared and distributed under this paragraph.

5. (a) *Use in Decisions and Orders*. The Commission will attempt to refer to Confidential Information in only a general or conclusionary form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in this proceeding to discuss Confidential Information in other than a general or conclusionary form, it shall be placed in a separate section of the order or decision under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit A. Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit A.

(b) *Summary for Record*. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the decision or order, to be placed on the public record.

6. *Segregation of Files*. Those parts of any writing, depositions reduced to writing, written examination, interrogatories, data requests, answers or other written references to Confidential Information in the course of discovery, if filed with the Commission, shall be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Confidential Information is released from the restrictions of this Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to the order of the Commission or final order of a court having jurisdiction.

7. *Preservation of Confidentiality*. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this Order, shall neither use nor disclose the Confidential Information for purposes of business, competition or any other purpose other than the purposes of preparation for and conduct of this proceeding and shall take reasonable precautions to keep the Confidential Information secure and in accordance with the purposes and intent of this Order.

8. *Reservation of Rights*. Parties to this proceeding retain the right to question, challenge and object on any legal ground to the production or admissibility of any information requested or furnished under the terms of this Order. This Order shall in no way constitute any waiver of the rights of a party to contest any assertion or finding of trade secret, confidentiality or proprietary designation and or of the right to appeal any such determination of the Commission, or such assertion by a party.

9. *Application*. The provisions of this Order apply to information supplied by and from any party to this proceeding and any nonparty that supplies documents pursuant to process issued by the Commission.

10. *GRAMA*. The Commission finds that the provisions of the Government Records Access and Management Act do not apply to materials subject to this Protective Order. However, in addition to and not in lieu of the provisions of this Order, any party to this

proceeding may submit any Confidential Information under the provisions of the Government Records Access and Management Act.

DATED in Salt Lake City, Utah this 18<sup>th</sup> day of November, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

G#31613

**APPENDIX A TO PROTECTIVE ORDER**

**IN DOCKET NO. 02-035-13**

I have read and understand the Protective Order approved by the Public Service Commission of Utah in Docket No. 02-035-13 and agree to be bound by the terms and conditions of that Order.

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Signature

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Name [print or type]

\_\_\_\_\_  
Residence Address

\_\_\_\_\_  
Employer or Firm

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Date