

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
PacifiCorp for a Generic Protective Order.)

DOCKET NO. 00-035-04

GENERIC PROTECTIVE ORDER

ISSUED: May 31, 2000

BY THE COMMISSION:

PacifiCorp, on May 17, 2000, submitted a Petition for Entry of Generic Protective Order to the Commission seeking entry of a generic protective order to protect confidential information provided by PacifiCorp to the Commission, the Division of Public Utilities ("Division") or the Committee of Consumer Services ("Committee") in connection with (1) investigations or studies for which there is no pending docket; (2) filings that are not likely to result in commencement of a docket; (3) tariff filings or other filings that may be uncontested or that may be resolved without the necessity of evidentiary hearings; and (4) reports required to be filed by statutes, rules or Commission orders.

PacifiCorp represented in its Petition that the entry of a generic protective order will afford necessary protection to confidential information and expedite the production of confidential information, will afford guidance to employees of the Commission and the parties who might review the confidential information and will provide them a basis to decline requests to disclose the confidential information. PacifiCorp further represented that entry of a generic protective order will enable the Commission, the Division and the Committee to review confidential information so that they may have sufficient information upon which to make reports, recommendations and decisions and enable parties to have access in the foregoing circumstances.

The Commission finds that sufficient grounds exist for entry of a generic protective order.

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. Definitions. The following definitions shall apply for purposes of this Order:

a. "Confidential Information" means information in whatever form disclosed by PacifiCorp or its affiliates that is designated as confidential by PacifiCorp. Such information includes, without limitation, information regarding individual customers, information regarding individual employees that is not normally made public, trade secrets, competitive strategies or plans, and other information, the disclosure of which could disadvantage PacifiCorp or its affiliates in relation to competitors, suppliers or customers and information which PacifiCorp or its affiliates is not permitted to disclose publicly pursuant to applicable law or agreement with a third party. "Confidential Information" includes Highly Sensitive Confidential Information except in instances where separate requirements or conditions are provided with respect to Highly Sensitive Confidential Information.

b. "Highly Sensitive Confidential Information" means confidential information in whatever form disclosed by PacifiCorp or its affiliates that is designated as highly sensitive by agreement of the parties or by the Commission. Such information includes, without limitation, confidential information that is so sensitive that the severe harm that could be caused by inadvertent disclosure outweighs the benefit to the Commission or parties of having continuous access to the information.

c. "Consultant" means any person a party has retained to render opinions or otherwise give advice to a party in the course of the matter for which PacifiCorp is requested to provide Confidential Information or Highly Sensitive Confidential Information.

2. Designation of Confidential Information.

a. PacifiCorp shall designate information disclosed to the Commission or a party that it deems confidential as Confidential Information at the time the information is disclosed. If Confidential Information is disclosed in writing or through production of documents, it shall contain the words "Confidential - Subject to Protective Order" prominently on it and shall be provided on yellow paper. If Confidential Information is disclosed in some other form, it shall be reasonably identified or labeled as Confidential Information.

b. If PacifiCorp believes information is highly sensitive, it may request that party requesting the information agree that the information is highly sensitive. If the party agrees, the information shall be designated as Highly Sensitive Confidential Information. If the party does not agree, PacifiCorp may request that the Commission designate the information as highly sensitive and may withhold disclosure of the information until such time as the Commission has ruled on its request. If Highly Sensitive Confidential Information is disclosed in writing or through the production of documents, it shall contain the words "Confidential - Highly Sensitive - Subject to Protective Order" prominently on it and shall be provided on pink paper. If Highly Sensitive Confidential Information is provided in some other form, it shall be reasonably identified or labeled as Highly Sensitive Confidential Information.

c. Inadvertent disclosure of Confidential Information or Highly Sensitive Confidential Information without complying with the foregoing provisions for designation shall not be deemed to be a waiver of a claim that the information is Confidential Information or Highly Sensitive Confidential Information, and PacifiCorp may later correct the error and thereafter the information will be treated as Confidential Information or Highly Sensitive Confidential Information subject to the terms of this Order. Failure of PacifiCorp to comply with all of the foregoing provisions for designation of Confidential Information does not relieve a person from compliance with the terms of this Order if the person knows the information is Confidential Information. Nothing in the foregoing sentence shall be deemed to create any duty on the part of any person to whom Confidential Information is inadvertently disclosed without proper designation to scrutinize the information to determine whether it is confidential or to inquire whether it is confidential.

3. Persons Entitled To Review Confidential Information.

a. **Parties' Attorneys and Employees.** Confidential Information disclosed pursuant to this Order may be provided to legal counsel for a party or to employees of the party who have signed a copy of the Nondisclosure Agreement attached to this Order as Appendix A. The parties shall limit the employees to whom Confidential Information is disclosed to those who have a need to know the information in their job responsibilities. A party shall not disclose Confidential Information to any employee until that person has read this Order and signed a copy of the Nondisclosure Agreement and provided a copy to the Commission and PacifiCorp.

b. **Consultants.** Confidential Information may not be disclosed to consultants to a party who are not employees of the party except upon the following terms:

i. The party shall not provide the Confidential Information to the consultant for five business days following provision to PacifiCorp of the Nondisclosure Agreement signed by the consultant unless PacifiCorp agrees that the information may be provided earlier.

ii. If PacifiCorp has not objected to disclosure of Confidential Information to the consultant or provided additional conditions for such disclosure within five business days following receipt of the Nondisclosure Agreement, PacifiCorp shall be deemed to have consented to disclosure of the Confidential Information to the consultant on the terms of this Order.

iii. If the Division or Committee proposes to provide Confidential Information to a consultant for whom PacifiCorp has already consented to the provision of Confidential Information in another matter, the Division or Committee shall provide notice to PacifiCorp of the specific additional Confidential Information proposed to be provided to the consultant. PacifiCorp shall have three business days following receipt of the notice to object or consent to the disclosure of the additional Confidential Information or to state conditions upon which the additional Confidential Information may be disclosed to the consultant. If PacifiCorp has not objected to disclosure of Confidential Information to the consultant or provided additional conditions for such disclosure within three business days following receipt of notice from the Division or Committee, PacifiCorp shall be deemed to have consented to the disclosure of the additional

Confidential Information identified in the notice to the consultant on the terms of this Order.

iv. The consultant shall return all Confidential Information to PacifiCorp within 30 days following completion of his or her consulting services on the matter for which the Confidential Information was provided unless an earlier time is provided pursuant to agreement or order of the Commission.

v. Notwithstanding the foregoing, Confidential Information may not be disclosed to a consultant who is involved in consulting with or providing advice to any competitor of PacifiCorp on pricing, marketing, or other strategic planning.

c. **Commission.** Any member of the Commission and its staff, under and pursuant to the applicable provisions of Title 54, Utah Code Annotated, the Utah Rules of Civil Procedure and the Rules of the Commission, may have access to any Confidential Information disclosed pursuant to this Order without signing and completing a Nondisclosure Agreement. However, such persons shall be bound by the terms of this Order nonetheless, and the Commission shall reasonably restrict access to Confidential Information to members of its staff with a need to have access to the Confidential Information in performing their job functions.

d. **Others.** Persons entitled to have access to Confidential Information pursuant to the terms of this Order may not disclose the information to or discuss it with other persons, except other persons who have been previously provided access to the same Confidential Information pursuant to the terms of this Order or who are employees of consultants to the same person, without the prior written consent of PacifiCorp, even if such other persons have signed and completed a Nondisclosure Agreement under this Order. The purpose of this paragraph is to preclude one party to which Confidential Information has been disclosed pursuant to the terms of this Order from providing the Confidential Information to another party that has not independently received access to the Confidential Information from PacifiCorp without the prior written permission of PacifiCorp.

4. **Use of Confidential Information.** Persons who have access to Confidential Information pursuant to this Order may use the Confidential Information solely for the purpose and solely in the matter for which it was provided and for no other purpose without the express written consent of PacifiCorp. Without limiting the foregoing sentence, it shall be a violation of this Order for any person other than an employee of the Commission, the Division or the Committee to use Confidential Information received in one matter in a different matter or for a different purpose than for which it was disclosed by PacifiCorp without the prior written consent of PacifiCorp, and it shall be a violation of this Order for any person to use Confidential Information for any business or commercial purpose. Persons who have access to Confidential Information pursuant to this Order may not disclose the Confidential Information to any other person, except persons entitled to receive the Confidential Information pursuant to the terms of this Order, without the prior written consent of PacifiCorp.

5. **Protection of Confidential Information.** It shall be the responsibility of each person and entity to whom access to Confidential Information is provided pursuant to the terms of this Order to take reasonable precautions to protect against disclosure of the Confidential Information to persons not entitled to have access to the information. Such precautions include, without limitation, keeping Confidential Information in segregated, secure files, not leaving Confidential Information unattended, keeping electronic copies of Confidential Information in secure, password protected electronic files and not making copies of Confidential Information except as absolutely necessary for the use of persons entitled to have access to the Confidential Information pursuant to the terms of this Order. If a copy of Confidential Information is made, it shall be clearly designated as Confidential Information in accordance with the terms of this Order. Notwithstanding the foregoing sentences, no copies may be made of Highly Sensitive Confidential Information.

6. **Nondisclosure Agreement.** Prior to giving access to Confidential Information as contemplated in this Order, a copy of this Order shall be reviewed by the person to whom the Confidential Information is to be provided, and, prior to disclosure, the person shall read a copy of this Order and agree in writing to comply with and be bound by the terms of this Order by signing and completing a Nondisclosure Agreement. The Nondisclosure Agreement shall be delivered to counsel for PacifiCorp and to the Commission prior to the person gaining access to the Confidential Information.

7. **Highly Sensitive Confidential Information.** If Confidential Information is Highly Sensitive Confidential Information, the Commission may direct that copies of the information not be delivered to persons entitled to have access to Confidential Information pursuant to this Order or be provided only on a limited basis or for a limited time. In

either case, the person reviewing the Confidential Information may make limited notes regarding the Highly Sensitive Confidential Information for reference purposes only. The notes may not constitute a verbatim or substantive transcript of the Highly Sensitive Confidential Information. Notes made pertaining to or as the result of a review of Highly Sensitive Confidential Information shall be considered Confidential Information and be subject to the terms of this Order.

8. Challenge to Confidentiality.

a. This Order establishes a procedure for the expeditious handling of Confidential Information; it is not an agreement or ruling on the confidentiality of any information.

b. In the event PacifiCorp designates information as Confidential Information that a party does not believe is Confidential Information, the party objecting to the designation shall notify PacifiCorp of the basis of its objection. If PacifiCorp does not withdraw the designation or satisfy the party that the information is Confidential Information within three business days, the party may submit the objection to the Commission. After considering the information at issue and any arguments submitted by the parties, the Commission shall enter an order resolving the issue.

c. In the event a party agrees to production of information as Highly Sensitive Confidential Information and the party later determines that it does not believe the information is Highly Sensitive Confidential Information, the party objecting to the designation shall notify PacifiCorp of the basis of its objection. If PacifiCorp does not withdraw the designation or satisfy the party that the information is Highly Sensitive Confidential Information within three business days, the party may submit the objection to the Commission. After considering the information at issue and any arguments submitted by the parties, the Commission shall enter an order resolving the issue.

d. If a party has agreed that PacifiCorp may provide access to Highly Sensitive Confidential Information only through inspection and the party thereafter believes that its inability to obtain a copy of the information will substantially interfere with its ability to prepare its report or recommendation, the party objecting shall notify PacifiCorp of the basis for its objection. PacifiCorp and the party shall attempt in good faith to arrive at mutually acceptable conditions that will allow the objecting party reasonable access on a temporary basis to the Highly Sensitive Confidential Information. If the parties are not successful in agreeing to mutually acceptable conditions within three business days, the objecting party may submit its objection to the Commission. After considering the information at issue and any arguments submitted by the parties, the Commission shall enter an order resolving the issue.

e. Any party at any time upon ten days prior notice may seek by appropriate pleading to have information that has been designated as Confidential Information or that has been 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 nature of Confidential Information is challenged, resolution of the issue shall be made by the Commission after proceedings *in camera* which shall be conducted under circumstances such that only those persons duly authorized in this Order to have access to the Confidential Information shall be present. The record of such *in camera* hearings shall be marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" and shall be transcribed only upon agreement by PacifiCorp 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 PacifiCorp, or after notice to the parties and hearing, pursuant to an order of the Commission. In the event that the Commission rules that any Confidential Information should be removed from the protective requirements of this Order or from the protection of the sealed record, the order of the Commission shall not be effective for a period of ten days after entry of the order.

9. Use of Confidential Information in Filings. Parties and the Commission will attempt to refer to Confidential Information only in a general or conclusory form and will avoid reproduction of Confidential Information in any memorandum, recommendation, report, pleading, decision or order to the greatest possible extent. If it is necessary to discuss Confidential Information other than in a general or conclusory form, it shall be placed in a separate section of the memorandum, recommendation, report, pleading, decision or order under seal. This sealed section shall be served only on counsel of record (one copy each) for PacifiCorp and on counsel for other parties who have signed a Nondisclosure Agreement. Counsel for other parties that have not signed a Nondisclosure Agreement shall receive the

cover sheet to the sealed portion and may obtain the Confidential Information once they have signed a Nondisclosure Agreement.

10. Segregation in Commission Files. Those portions of any memorandum, recommendation, report, pleading, decision or order or any discovery or any other written reference to Confidential Information, if filed with the Commission, will 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.

11. Continuing Effect of Order. Unless otherwise ordered, Confidential Information shall continue to be subject to the requirements of this Order following conclusion of the matter in which the Confidential Information was disclosed. All copies and reproductions of Confidential Information, including excerpts, summaries, worksheets and the like, disclosed to any consultant shall be returned to counsel for PacifiCorp within 30 days after conclusion of the matter. In order to facilitate their ongoing regulatory responsibility, employees of the Commission, and employees of the Division or the Committee who have received access to Confidential Information pursuant to this Order may retain the Confidential Information subject to the terms of this Order unless PacifiCorp specifically requests that the information be returned.

12. Reservation of Rights.

a. The parties affected by the terms of this Order retain the right to question, challenge, and object to any request for any and all data, information, studies, or to the admissibility of any such information, data or studies furnished under the terms of this Order on the grounds of relevancy or materiality.

b. This Order shall in no way constitute any waiver of the rights of any party to contest any assertion by PacifiCorp or finding by the Commission that any information is a trade secret, confidential or privileged, and to appeal any assertion or finding.

c. This Order shall in no way constitute any waiver of the right of any party to contest the right or jurisdiction of the Commission, the Division or the Committee to conduct or participate in any investigation or study or any other matter or proceeding.

DATED at Salt Lake City, Utah, this 31st day of May, 2000.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard, Commission Secretary

APPENDIX A TO PROTECTIVE ORDER

NONDISCLOSURE AGREEMENT

I have reviewed the Protective Order entered by the Public Service Commission of Utah in Docket No. 00-035-04 on May 31, 2000 with respect to the review and use of Confidential Information and agree to comply with the terms and conditions of the Protective Order. Without limiting the foregoing, I agree that I will use any Confidential Information to which I am provided access solely for the purpose and in the matter for which it is disclosed, that I will not disclose the Confidential Information to or discuss it with any other person for any reason except with persons to whom I am authorized to disclose the Confidential Information pursuant to the terms of the Protective Order, that I will take reasonable precautions to protect the confidentiality of the Confidential Information and that I will not use the Confidential Information for any business or commercial purpose whatsoever.

Signature:

Name (type or print):

Residence Address:

Employer or Firm

Name:

Business Address:

Party Represented:

Date Signed: