



Portland General Electric Company
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Loretta I. Mabinton
Associate General Counsel

October 1, 2018

Via Electronic Filing

Oregon Public Utility Commission
Attention: Filing Center
201 High Street, Ste. 100
PO Box 1088
Salem OR 97308-1088

Re: UM 1934 – Portland General Electric Company’s 2018 Request for Proposals for Renewable Resources

Attention Filing Center:

Enclosed for filing is Portland General Electric Company’s Motion for Modified Protective Order.

Sincerely,

A handwritten signature in blue ink that reads "Loretta Mabinton". The signature is written in a cursive style with a large initial "L".

Loretta I. Mabinton
Associate General Counsel

LM: sj

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1934

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

2018 Request for Proposals for Renewable
Resources.

**PORTLAND GENERAL ELECTRIC
COMPANY'S MOTION FOR MODIFIED
PROTECTIVE ORDER**

***EXPEDITED CONSIDERATION
REQUESTED***

Pursuant to 860-001-420 and OAR 860-001-0080(3), Portland General Electric Company ("PGE") moves the Public Utility Commission of Oregon (Commission) for an entry of a Modified Protective Order in this proceeding to provide additional protections for highly confidential information. The highly confidential information consists of bid information, analysis and modeling that rely on bid information, and portions of the Final Closing Report of the independent evaluator (IE) that rely on and refer to bid information in response to PGE's 2018 Request for Proposals for Renewable Resources (RFP).

I. BACKGROUND

On February 26, 2018, PGE filed a Motion for a General Protective Order, which was granted on February 27, 2018.¹ On March 9, 2018, PGE filed an application for approval of its 2018 Renewable RFP.

¹ OPUC Order 18-063, Feb. 27, 2018.

II. REQUEST FOR ADDITIONAL PROTECTION

On October 2, 2018, PGE will file its Request for Acknowledgement of the Final Shortlist (Request), as required by the Commission's Competitive Bidding Guidelines (Guidelines)². As required by Guideline 11, the Request will include the Bates White's³ Final Closing Report which contains bid details that were submitted and analyzed as part of the RFP. The bids information, and analysis and modeling of the bids, are highly sensitive, non-public commercial information. PGE expects to commence negotiations with the short listed bidders, and expects to execute definitive agreement(s) by the end of the year. If disclosed, the highly confidential bid information would harm bidders by premature disclosure of their bid information, harm customers by compromising PGE's ability to successfully negotiate final agreements, and could result in less competitive bids in future RFPs.

A Modified Protective Order would provide additional protection for the highly commercially sensitive, non-public bid information, and related analysis contained in the IE's report and the un-redacted Request. A Modified Protective Order (MPO) is included as Attachment A to this motion. PGE requests the Administrative Law Judge (ALJ) issue the MPO as soon as possible.

III. REQUIREMENTS OF OAR 860-001-0080(3)(a)

This Motion addresses all of the requirements for a modified protective order contained in OAR 860-001-0080(3)(a).

A. The Parties and the Exact Nature of the Information Involved (OAR 860-001-0080(3)(a)(A)).

² Order No. 14-149 at 14 (adopting mandatory acknowledgement of final shortlist of a utility solicitation).

³ Bates White, LLC was appointed by the Commission as the independent evaluator (IE) for the RFP.

The Parties are Renewable Northwest; Citizens Utility Board; The Northwest and Intermountain Power Producers Coalition (NIPPC); Alliance of Western Energy Consumers (AWEC) (formerly known as ICNU); CP Energy Marketing (US) Inc.; Community Renewable Energy Association (CREA); and Portland General Electric Company (PGE). Only highly sensitive commercial information submitted into the RFP and the related evaluation and resulting analysis will be protected under the Modified Protective Order. If this information is disclosed, it would result in the loss of a competitive advantage to the owners of the information, including bidders, PGE, and will be to the detriment of our customers.

B. The Legal Basis for the Claim that the Information is Protected under ORCP 36(C)(1) or the Public Records Law (OAR 860-001-0080(3)(a)(B)).

ORCP 36(C)(1)⁴ gives the Commission the authority to protect against unrestricted discovery of "... a trade secret or other confidential research, development, or commercial information". A "trade secret" is information, including cost data, that: (a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons 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 secrecy⁵. In addition, the Oregon Public Records Law exempts from disclosure public records that are "trade secrets" that:

[M]ay include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it."⁶

⁴ Under OAR 860-001-0000, the Oregon Rules of Civil Procedure applies to this proceeding.

⁵ Oregon's Uniform Trade Secrets Act, ORS 646.461 to 646.475

⁶ ORS 192.345(2). See generally ORS 192.410 to 192.505.

PGE is seeking additional protection for information that is non-public information, proprietary and commercially sensitive. The nature of the ongoing RFP and proposed negotiations with counterparties mandates the utmost confidentiality. PGE's ability to protect such information will inure directly to the benefit of customers as PGE negotiates the acquisition of the least-cost, least-risk resources on behalf of customers. The disclosure of bid information would have an immediate and adverse effect on PGE's ability to successfully negotiate the final agreements in this RFP. Disclosure of the price, terms, or conditions included in the RFP bids, or disclosure of certain portions of the IE Final Closing Report or disclosure of PGE's modeling and analysis of price, terms, and conditions, would cost PGE its competitive position in current and potential future negotiations with counter-parties.

Disclosure could also impact the competitiveness of future solicitations as it would chill the willingness of bidders to put their competitive information into a process that will subsequently make such information available to third parties, including parties that they compete against. The failure to protect bid information will likely chill participation in future solicitations, make them less competitive, and reduce the likelihood that future solicitations result in the least-cost, least-risk resources for customers.

PGE seeks this Modified Protective Order so that it can designate the commercially sensitive bid information and associated analysis, as highly confidential information and minimize the risk of disadvantaging the company in its negotiations in the RFP, and to better ensure that future solicitations are competitive.

C. The Exact Nature of the Relief Requested (OAR 860-001-0080(3)(a)(C)).

PGE requests that the Commission enter the proposed Modified Protective Order that is included in this Motion as Attachment A. The terms of the Modified Protective Order are narrowly

tailored and intended to apply only to commercially sensitive information of bidders and PGE. The proposed Modified Protective Order will allow the transmission of such information to all of the Parties that sign the Modified Protective Order.

D. The Specific Reasons the Relief Requested is Necessary (OAR 860-001-0080(3)(a)(D)).

The requested Modified Protective Order will protect against widespread disclosure of commercially sensitive information that is protectable under law. The additional protection provided by the MPO will allow the Parties access to the information in a manner that protects highly sensitive commercial information. The requested MPO will also help reduce the risk of an inadvertent disclosure of the highly sensitive commercial information.

In recognition of the highly commercially sensitive information that bidders provide and which are reflected in the analysis, Commission has in other proceedings entered MPOs similar to that sought in this Motion⁷. The General Protective Order is insufficient as it is general in nature and does not have adequate safeguards to protect highly confidential information.

E. A Detailed Description of the Intermediate Measures, Including Selected Redaction, Explored by the Parties and Why These Measures Are Insufficient (OAR 860-001-0080(3)(a)(E)).

Based on experience in previous proceedings⁸, selected redactions have neither being satisfactory nor sufficient. The proposed MPO has been crafted to both protect highly confidential information and to give the Parties access to information that they reasonably require to participate

⁷ *In the Matter of PacifiCorp, d/b/a Pacific Power, Application for Approval of Final Draft 2017R Request for Proposals*, Docket No. UM 1845, Order No. 18-057 (Feb. 20, 2018) (motion for modified protective order granted); Order No. 18-080 (Mar. 08, 2018) (Modified Protective Order 18-057 rescinded and replaced with modified protective order).

⁸ *In the Matter of Portland General Electric Company Request for Proposals for Renewable Resources*, Docket No. UM 1613, Jul. 25, 2012 (PGE issues its final draft Request for Proposals for renewal energy resources), and *In the Matter of PacifiCorp, d/b/a Pacific Power, Request for Proposals of an Independent Evaluator to Oversee the Request for Proposal Process*, Docket No. UM 1845 (Jun. 1, 2017).

effectively in this proceeding. The MPO restricts the manner and means by which highly confidential information may be maintained, stored, and transmitted, limits access to such information to ‘qualified persons’ and therefore provides reasonable steps to protect highly confidential information and minimizes the risk of inadvertent disclosure. These protections and restrictions are similar to business protections and restrictions that contracting parties put in place to protect their highly commercially sensitive, non-public information.

IV. CONCLUSION

For the reasons stated above, PGE respectfully requests that the Commission issue a Modified Protective Order in the form provided as Attachment A to this Motion. PGE requests expedited consideration of this motion to allow disclosure of confidential materials as soon as possible after the filing of its request.

DATED this 1st day of October 2018.

Respectfully submitted,



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MODIFIED PROTECTIVE ORDER

DOCKET NO. UM 1934

Scope of this Order:

1. General Protective Order No. 18-063 governs the acquisition and use of "Protected Information." This order supplements the general protective order and governs the acquisition and use of "Highly Protected Information" produced or used by any party in docket UM 1934.

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 MODIFIED PROTECTIVE ORDER NO. _____

The party should make reasonable efforts to designate as Highly Protected Information only the portions of the information that satisfies paragraph 2 of this Modified Protective 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. _____
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.
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 192.410 *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;
 - (b) Counsel for a Party in UM 1934, except a Party in UM 1934 (including attorneys) that was a bidder or planned to bid in Portland General Electric Company's 2018 Request for Proposals for Renewable Resources.
14. A party bound by General Protective Order No. 18-063 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 15.

Objection to Access to Highly Protected Information:

15. 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, or objects to a person seeking qualification under Paragraph 14, 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.
16. 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 five business days of service of an objection. The ALJ will make all reasonable efforts to resolve the matter within ten 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:

17. All Qualified Persons must take reasonable precautions to keep Highly Protected Information secure. Qualified Persons may reproduce Highly Protected Information 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.
18. 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.
19. Nothing in this Modified 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 Modified Protective Order.
20. 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 such other person's retention of the Highly Protected Information. This paragraph does not apply to the Commission or Staff.

Duration of Protection:

21. 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

CONSENT TO BE BOUND AND SIGNATORY PAGE FOR HIGHLY PROTECTED INFORMATION

DOCKET NO. UM 1934

I. Consent to be Bound

_____ (Party) agrees to be bound by the terms of this Modified Protective Order.

Signature: _____
Printed: _____
Date: _____

II. 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 and non-competitive 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: _____

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APPENDIX C

DOCKET NO. UM 1934

III. Persons Seeking Qualification under Paragraph Qualified pursuant to Paragraph 14:

I have read the modified protective order, agree to be bound by the terms of this order, and provide the following information to seek access to certain specific information designated as Highly Confidential Information.

Signature:		Date:
Printed Name:		
Physical Address:		
Email Address:		
Employer:		
Associated Party:		
Job Title:		
If not employee of party, description of practice and clients:		
I seek access to the following specific information designated as Highly Protected Information for the following reasons:		