

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1934

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,2018 Request for Proposals for
Renewable Resources.MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On October 1, 2018, Portland General Electric Company filed a motion for a Modified Protective Order to provide additional protections for information included in the company's request for acknowledgment of a final short list of bidders.

PGE's motion includes the elements required by OAR 860-001-0080(3)(a)(A)-(E). PGE states that its filing contains highly confidential information consisting 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). PGE states that 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 future RFPs.

PGE's requested Modified Protective Order contains two provisions for additional protection beyond that provided by the general protective order. First, the Modified Protective Order limits the persons who will have access to the highly protected information. Paragraph 13(b) of the proposed Modified Protective Order allows the following persons to access to highly protected information: "Counsel for a non-bidding Party in UM 1934, except a Party in UM 1934 (including attorneys) who is a seller, producer, or distributor of energy or energy resources." PGE conferred with the parties to this proceeding (as shown in docketed emails) and explains that Northwest & Intermountain Power Producers Coalition's (NIPPC) attorneys would be able to sign this Modified Protective Order, and that PGE's intent is to prevent a party that could bid in future RFPs from receiving highly confidential information.

The second protection in the Modified Protective Order is that highly protected information must be labeled as Highly Protected and printed on green paper, or placed in a "Highly Protected" folder in Huddle.

I conclude that PGE has established a legal basis for additional protection under OAR 860-001-0080(3)(a) and issue the attached Modified Protective Order to govern access to bid information that has been designated as "Highly Protected Information." General Protective Order No. 18-063 will continue to govern access to "Protected Information."

I also adopt the Modified Protective Order on an expedited basis because PGE has conferred with the parties and no party objects to the Modified Protective Order. I do so to help facilitate the exchange of information needed to help inform the October 17, 2018 filing of party comments on the IE's Report. This quick action does not foreclose a party from seeking reconsideration of this decision.

Made, entered, and effective on OCT 03 2018.



A handwritten signature in blue ink, appearing to read "Sarah Rowe", is written over a horizontal line.

Sarah Rowe
Administrative Law Judge

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 non-bidding Party in UM 1934, except a Party in UM 1934 (including attorneys) who is a seller, producer, or distributor of energy or energy 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: _____ Date: _____

Printed Name: _____

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: _____

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:		