

ORDER NO. 18 445

ENTERED NOV 21 2018

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 610

In the Matter of

Rulemaking Regarding the Incremental
Cost of Renewable Portfolio Standard
Compliance.

GENERAL
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR PROTECTIVE ORDER GRANTED

On November 19, 2018, Portland General Electric Company (PGE) filed a motion for a general protective order to govern the acquisition and use of protected information produced or used in these proceedings. PGE states that the order is needed to protect certain information that falls within the scope of ORCP 36(C)(7). Specifically, PGE states that the commercially sensitive pricing information that it intends to provide in response to information requests is protected, and that the public release of this information could prejudice PGE and its customers. PGE further states that the information is of significant commercial value and that it anticipates that there will be further requests for commercially sensitive information in these proceedings.


I find that good cause exists to issue a general protective order, which is attached as Appendix A. As requested, I issue this protective order on an expedited basis to allow discovery to continue uninterrupted. This expedited action does not foreclose a participant from seeking reconsideration of this decision under OAR 860-001-0720.

ORDER

IT IS ORDERED that the general protective order, attached as Appendix A, is adopted.

Made, entered, and effective on NOV 21 2018.





Sarah Rowe
Administrative Law Judge

GENERAL PROTECTIVE ORDER
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Scope of this Order:

1. This order governs the acquisition and use of Protected Information produced or used by any participant in these proceedings.

Designation of Protected Information:

2. Any participant may designate as Protected Information any information the participant reasonably determines:
 - (a) Falls within the scope of ORCP 36(C)(7) (a trade secret or other confidential research, development, or commercial information); and
 - (b) Is not publically available.
3. To designate information as Protected Information, a participant must place the following legend on the material:

PROTECTED INFORMATION
SUBJECT TO GENERAL PROTECTIVE ORDER

The participant should make reasonable efforts to designate as Protected Information only the portions of the information covered by ORCP 36(C)(7).

4. Each page of a document containing Protected Information filed with the Commission or provided to Qualified Persons under this order must be printed on yellow paper and placed in a sealed envelope or other appropriate container. *Only the portions of a document that fall within ORCP 36(C)(7) may be placed in the envelope/container.* The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. _____
AND CONTAINS PROTECTED INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED
PERSONS AS DEFINED IN THE ORDER.

5. A participant may designate as Protected Information any information previously provided by giving written notice to the Commission and other participants. Participants in possession of newly designated 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 participant.
6. A designating participant must make reasonable efforts to ensure that information designated as Protected Information continues to warrant protection under this order. If designated information becomes publically available or no longer falls within the scope

of ORCP 36(C)(7), the designating participant should make reasonable efforts to remove the protected designation and provide written notice to the Commission and other participants.

Challenge to Designation of Information as Protected:

7. A participant may informally challenge any designation of Protected Information by notifying the designating participant. Once notified, the designating participant bears the burden of showing that the challenged information is covered by ORCP 36(C)(7). Any participant may request that the ALJ hold a conference to help resolve disputes about proper designation.

8. If the dispute cannot be resolved informally, the challenging participant 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.

9. Within five business days of service of the objection, the designating participant must either remove the 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 participant does not timely respond to the objection, the Commission will remove the protected designation from the challenged information.

10. The challenging participant may file a written reply to any response within five business days of service of an objection. The designating participant 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 Protected Information:

11. Only Qualified Persons may access Protected Information designated by another participant under this Protective Order. Persons automatically bound by this protective order and qualified to access Protected Information are:

- a. Commission employees; and
- b. Assistant Attorneys General assigned to represent the Commission.

12. Persons qualified upon a participant signing the Consent to be Bound section of Appendix B are:

- a. Counsel for the participant;
- b. Any person employed directly by counsel of record; and
- c. An employee of the Regulatory Division at the Citizens' Utility Board of Oregon.

A participant must identify all these persons in section 2 of Appendix B when consenting to be bound by the order, and must update this list throughout the proceeding to ensure it accurately identifies Qualified Persons

13. A participant bound by the protective order may seek to qualify other persons to access Protected Information by having those persons complete and sign Appendix C, and submitting that information to the Commission and all participants. Within five business days of receiving a copy of Appendix C, the designating participant must either provide the requested access to Protected Information or file an objection under Paragraph 14.

Objection to Access to Protected Information:

14. All Qualified Persons have access to Protected Information unless the designating participant objects as provided in this paragraph. As soon as the designating participant becomes aware of reasons to restrict access to a Qualified Person, the designating participant must provide the Qualified Person and his or her counsel notice stating the basis for the objection. The participants must promptly confer and attempt to resolve the dispute on an informal basis.

15. If the participants are unable to resolve the matter informally, the designating participant must file a written objection with the ALJ. The requesting participant may file a response to the motion within 5 business days of service of an objection. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of the last filing. Pending the ALJ's decision, the specific Protected Information may not be disclosed to the person subject to the objection.

Use of Protected Information:

16. All Qualified Persons must take reasonable precautions to keep Protected Information secure. A Qualified Person may reproduce Protected Information to the extent necessary to participate in these proceedings. A Qualified Person may discuss Protected Information obtained under this order only with other Qualified Persons who have obtained the same information.

17. Without the written permission of the designating participant, any Qualified Person given access to Protected Information under this order may not disclose Protected Information for any purpose other than participating in these proceedings.

18. Nothing in this protective order precludes any participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this protective order.

19. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing 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. The information retained may only be disclosed to Qualified Persons under this order. Any other person retaining Protected Information must destroy or return it to the designating participant within 90 days after final resolution of these proceedings unless the designating participant consents in writing to retention of the Protected Information. This paragraph does not apply to the Commission or its Staff.

Duration of Protection:

20. The Commission will preserve the designation of information as protected 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 participant. The Commission will notify the designating participant at least two weeks prior to the release of Protected Information.

CONSENT TO BE BOUND
AR 610

I. Consent to be Bound:

This general protective order governs the use of Protected Information in these proceedings.

_____ (Participant) agrees to be bound by the terms of the general protective order and certifies that it has an interest in these proceedings that is not adequately represented by other participants to the proceedings.

Signature: _____

Printed Name: _____

Date: _____

II. Persons Qualified under Paragraph 12:

_____ (Participant) identifies the following person(s) qualified under paragraph 12.

PRINTED NAME	DATE

QUALIFICATION OF OTHER PERSONS
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III. Persons Seeking Qualification under Paragraph 13:

I have read the general protective order, agree to be bound by the terms of the order, and provide the following information.

Signature:		Date:
Printed Name:		
Physical Address:		
Email Address:		
Employer:		
Associated Party:		
Job Title:		
If not employee of participant, description of practice and clients:		