



**Portland General Electric Company**

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May 19, 2023

***Via Electronic Filing***

Public Utility Commission of Oregon  
Attention: Filing Center  
201 High Street SE, Suite 100  
P.O. Box 1088  
Salem, OR 97308-1088

**RE: Docket UM 2033 – Portland General Electric Company, Transportation  
Electrification Plan**

Dear Filing Center:

Enclosed is Portland General Electric Company's Motion for a Modified Protective Order and proposed Modified Protective Order attached as Appendix A for filing in the above-referenced docket.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brendan J. McCarthy". The signature is fluid and cursive, written over a white background.

Brendan J. McCarthy  
Assistant General Counsel III

BJM:bp

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 2033**

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Oregon Transportation Electrification Plan.

**PORTLAND GENERAL ELECTRIC  
COMPANY MOTION FOR A  
MODIFIED PROTECTIVE ORDER**

**I. INTRODUCTION**

Pursuant to OAR 860-001-0080(3) and 860-001-0420, Portland General Electric Company (PGE or Company) moves the Public Utility Commission of Oregon (Commission or OPUC) for entry of a Modified Protective Order in this Transportation Electrification Plan (Plan) proceeding. Specifically, PGE requests the Administrative Law Judge (ALJ) issue the Modified Protective Order attached as Appendix A to this motion. A Modified Protective Order would provide additional protection for highly sensitive, non-public information related to specific pricing information and program costs that if disclosed could provide an unfair advantage to PGE’s direct and indirect competitors, skew the responses in forthcoming requests for proposals and harm the marketplace along with PGE’s future procurement efforts.

On January 31, 2020, the ALJ granted General Protective Order No. 20-037 in this proceeding. In order to provide information to the Commission in this proceeding, PGE will need to disclose information that is Highly Protected Information. Public disclosure of this information could damage or distort negotiations or agreements regarding implementing elements contained in the Plan and hinder the Company’s efforts to acquire and manage programs and equipment that support the Plan in the most cost-effective manner for customers. Release of commercially

sensitive information to market participants could hinder those efforts by revealing which terms, conditions and prices might be acceptable in negotiations to these market participants and to PGE.

To better prevent the improper use or disclosure of Highly Protected Information, PGE requests that the Commission enter a Modified Protective Order that includes the following narrowly tailored protections:

- Persons involved in current or future Plan programs and projects as vendors, or persons who could reasonably be expected to be involved in such programs and projects as a vendor, not initially be granted access to Highly Protected Information. Restricting access for these persons will better ensure that vendors will not improperly obtain an unfair competitive advantage by relying on commercially sensitive pricing, cost information or certain Plan analysis that may be provided in this proceeding.
- Persons who are vendors or who could reasonably be expected to be involved in programs or projects as a vendor can request access on a case-by-case basis.
- Highly Protected Information for all other intervenors will be provided one of three ways, through the Commission's discovery portal, through a password and encrypted electronic file, or through physical inspection.

Preventing widespread distribution of Highly Protected Information makes public disclosure, and the resulting harm, substantially less likely.

## **II. REQUEST FOR ADDITIONAL PROTECTION**

OAR 860-001-0080(3) contains five requirements for seeking a modified protective order.

This motion addresses each of these requirements in the following subsections.

### **A. Exact Nature of the Information Involved (OAR 860-001-0080(3)(a)(A)).**

As part of PGE's Plan, PGE will provide the existing approved budgets combined with a forecast for new programs of proposed operating and capital expenditures. These expenditures will be broken down by amounts for direct incentives, program operations, operation and maintenance, outreach and education and infrastructure. PGE will also provide estimated

contracted evaluation costs by program and year. The information is commercially sensitive pricing and program cost information that will be provided for each element in the Plan. The information is of a nature that, if known by potential bidders or providers, would influence bids and disrupt PGE's efforts to obtain fair terms in contract negotiations or agreements or put PGE at a disadvantage if pursuing delivery of the programs directly.

**B. Legal Basis for the Claim the Information is Protected under ORCP 36(C)(1) (OAR 860-001-0080(3)(a)(B)).**

ORCP 36(C)(1) provides protection against unrestricted discovery of "trade secrets or other confidential research, development, or commercial information." As discussed above, PGE expects to submit in the Plan and potentially discuss the sensitive commercial information described in Paragraph II.A. including specific, highly sensitive information that if disclosed could harm PGE's current and future efforts under the Plan.

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 secrecy.<sup>1</sup>

In addition, Oregon Public Records Law conditionally 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.<sup>2</sup>

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<sup>1</sup> See Uniform Trade Secrets Act, ORS 646.461 to 646.475.

<sup>2</sup> ORS 192.345.

PGE is seeking additional protection for information that is non-public, proprietary, and commercially sensitive and the nature of the proposed programs under the Plan mandates the elevated confidentiality considerations. As PGE negotiates least-cost, least-risk agreements or solicits bids for delivery of elements authorized under the Plan, PGE's ability to protect such commercially sensitive information will directly benefit customers. The potential disclosure of such information may provide vendors with significant commercial advantage, making those solicitations and negotiations less competitive, thus harming the outcome and would have an immediate and adverse effect on PGE's ability to successfully conclude agreements without prejudice.

If approved in this Modified Protective Order, PGE would designate the commercially sensitive pricing and program cost information relating to elements in the Plan as Highly Protected Information, which would minimize the risk of disadvantaging the company and its customers in its negotiations and help ensure that future procurement efforts are competitive.

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

The Company requests that the Commission enter the proposed Modified Protective Order that is included in this Motion as Appendix A. The terms of Modified Protective Order are narrowly tailored and intended to apply only to a limited set of commercially sensitive information and to a limited number of parties. The Modified Protective Order will protect the Highly Protected Information by limiting access to the following: The Commission employees and counsel assigned to represent the Commission, Citizens' Utility Board of Oregon (CUB) and its counsel, employees of the NW Energy Coalition, counsel for the Alliance of Western Energy Consumers and counsel for other parties in this docket who seek to be qualified. Paragraph 13 of

Appendix A outlines a process for those additional parties to seek access to Highly Protected Information on a case-by-case basis.

The proposed Modified Protective Order also requires that Highly Protected Information be maintained in a manner distinct from non-confidential information and from Protected Information. Typically, Highly Protected Information must be printed on a color of paper that distinguishes it from Protected Information and public information. Like Protected Information, Highly Protected Information must be stored in a locked room or cabinet, and Highly Protected Information may not be used or disclosed for any purpose other than participation in this proceeding.

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

The requested Modified Protective Order will protect against the widespread disclosure of commercially sensitive information that is protectable under law while enabling PGE to provide critical information and analysis regarding the Plan to certain parties in this proceeding. The goal of PGE's proposed protection is to minimize the number of persons who have access to the Highly Protected Information and to ensure that it does not fall into the hands of market participants or get used in commercial negotiations and solicitations. PGE's efforts in these negotiations and solicitations have been, and will continue to be, ongoing. Accordingly, any release of commercial details could disrupt the competitive process and cause harm to the negotiations and solicitations and, by extension, PGE and its customers. For this reason, it is important that the Commission issue a Modified Protective Order that limits the number of people who receive Highly Protected Information.

It is essential to prevent the Highly Protected Information from being provided to any vendors or other persons participating in this docket who could reasonably be expected to be a

vendor in the future. Information in this docket is such that even a person who is currently not presently providing services, programs or products to PGE related to those in the Plan would not be able to “forget” the information once it is disclosed in this docket. As a result, if a person reviews Highly Protected Information in this docket and later participates in a solicitation or negotiation, the Highly Protected Information necessarily will influence their actions, despite any prohibition on use provided by a General Protective Order.

PGE asks that the Highly Protected Information be made available only to the parties specified in Paragraphs 12 and 13 of Appendix A. This approach will strike a balance, ensuring that those parties charged by the legislature and the people with protecting the public and consumer interests have a full opportunity to vet information such as specific pricing and costs, while at the same time providing PGE with the ability to protect the integrity of any negotiations and solicitations.

The additional protection provided by the Modified Protective Order will allow access to the information in a manner that protects highly sensitive commercial information. The requested Modified Protective Order will also help reduce the risk of an inadvertent disclosure of the highly sensitive commercial information. The General Protective Order is insufficient as it is general in nature and does not have adequate safeguards to protect Highly Protected Information. Reliance on the General Protective Order would hinder PGE’s ability to prevent disclosure to business representatives of commercial interests sometimes opposed to PGE and its customers financial interests.

**E. Description of the Intermediate Measures Explored by the Parties (OAR 860-001-0080 (3)(a)(E)).**

The standard protective order will be insufficient to protect PGE's highly sensitive commercial information. Intermediate measures are not available – for example, selective redaction would not be possible without rendering incomplete the information provided to the Commission, Staff and key stakeholders for their review of PGE's Plan. As explained above, it is necessary to limit access to highly specific information regarding pricing and costs because viewing such information would inevitably influence the actions of market participants and potential market participants, and no other precautions other than limiting access can prevent this outcome.

**F. Certification of Conferring with Parties (OAR 860-001-0080(3)(a)(F)).**

PGE provided advance notice on separate dates to parties and other persons on the UM 2033 docket service list of its proposed Motion in this proceeding. ChargePoint, CUB, AWEC and counsel for Staff, responded to the attempt to confer and do not object to the issuance of a Modified Protective Order. Forth, not a party but on the service list, responded with support for the Motion.

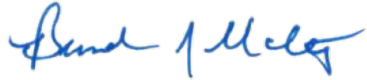
### **III. CONCLUSION**

For the reasons set forth above, PGE respectfully requests that the Commission issue a Modified Protective Order in the format provided as Appendix A to this Motion for the purposes of Docket UM 2033, to allow PGE to provide sensitive commercial information, including PGE's pricing and costs related to proposals and programs under the Plan.



DATED this 19th day of May, 2023.

Respectfully submitted,



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## **APPENDIX A**

### **PROPOSED MODIFIED PROTECTIVE ORDER**

**MODIFIED PROTECTIVE ORDER**

DOCKET NO. UM 2033

**Scope of this Order:**

1. This order supplements General Protective Order No. 20-037 and governs the acquisition and use of Highly Protected Information produced or used by any party to Docket UM 2033.

**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);
  - 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. All Highly Protected Information in OPUC Docket UM 2033 will be provided either through: (a) the Commission's discovery portal; (b) a password protected and encrypted electronic ZIP file distributed to Qualified Persons who have signed the appropriate protective order; (c) or through physical inspection at a place identified by PGE, or in a manner mutually agreed upon by the requestor and PGE, for material PGE identifies as highly sensitive information.

Each page of a document containing Highly Protected Information filed with the Commission or provided to Qualified Persons under this order, electronically or through a designated shared workspace, must be clearly marked as Highly Protected Information and maintained in a separate, secure folder. Any file or folder containing Highly Protected Information must be designated "Highly Protected Information." If the cells in a spreadsheet or other tabular document include information that has been designated as highly protected and that would be impractical or unduly burdensome to mark as required above, the party designating information as highly protected need not comply with this

requirement but must identify that information in a way that reasonably provides the Commission and Qualified Persons with sufficient identification of the information to be protected.

5. Highly Protected Information disclosed by a designated party to a person qualified to access Highly Protected Information through informal discovery or by means of Commission's Huddle website will be marked "Highly Protected Information" and uploaded to a file folder designated "highly protected information" 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 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 Protected or 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). If a party challenges the "Highly Protected Information" designation, the designating party 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 (5) 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 (5) business days of service of an objection. The designating party may file a sur-reply within three (3) 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 and qualified to access Highly Protected Information are:
  - a. Commission employees; and
  - b. Assistant Attorneys General assigned to represent the Commission.
13. Qualified Persons may access Highly Protected Information upon a party signing Appendix B are:
  - a. An employee or counsel of Portland General Electric Company or the Citizens' Utility Board of Oregon;
  - b. An employee for NW Energy Coalition;
  - c. Counsel for Alliance of Western Energy Consumers; and
  - d. Counsel for any other party, upon the mutual agreement of that party and Portland General Electric Company, and subject to any additional restrictions mutually agreed upon. Any dispute that arises under this section will be resolved under paragraph 15.

A party must identify all these persons in section 1 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.

14. A party bound by the General Protective Order No. 20-037 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, 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 (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 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 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 under this order.
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 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 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 retention of the Highly Protected Information. This paragraph does not apply to the Commission or its staff.

**Duration of Protection:**

21. The Commission will preserve the designation of information as Highly Protected Information for a period of five (5) 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 (2) weeks prior to the release of the Highly Protected Information.

**CONSENT TO BE BOUND AND SIGNATORY PAGE**

Docket UM 2033

**I. Persons Qualified to access Highly Protected Information under Paragraph 13:**

I have read the Modified Protective Order and agree to the terms of the order.

I certify that:

I understand that ORS 756.990(2) allows the Public Utility Commission of Oregon (“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: \_\_\_\_\_

**CONSENT TO BE BOUND AND SIGNATORY PAGE**

Docket UM 2033

**I. Persons Seeking Qualification under Paragraph 14:**

I have read the Modified Protective Order, agree to be bound by the terms of the order, and provide the following information to seek access to certain specific information designated as Highly Protected Information.

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