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January 27, 2022

***Via Electronic Filing***

Public Utility Commission of Oregon  
Attention: Filing Center  
201 High Street Southeast, Suite 100  
Post Office Box 1088  
Salem, Oregon 97308-1088

**Re: UM 2166 – In the Matter of Portland General Electric Company, Application for Approval of an Independent Evaluator for 2021 All-Source Request for Proposals**

Dear Filing Center:

Enclosed for filing today in the above-referenced docket is Portland General Electric Company's ("PGE") Motion for Modified Protective Order. This document is being filed electronically with filing center.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Loretta Mabinton".

Loretta Mabinton  
Managing Assistant General Counsel

LM:dm  
Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2166**

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

2021 All-Source Request for Proposals.

**MOTION FOR MODIFIED  
PROTECTIVE ORDER**

*Expedited Consideration Requested*

**I. INTRODUCTION**

Pursuant to OAR 860-001-0420 and OAR 860-001-0080(3), Portland General Electric Company (“PGE”) moves the Public Utility Commission of Oregon (“Commission”) for entry of a Modified Protective Order in its 2021 All-Source Request for Proposals (“RFP”) proceeding. Specifically, PGE requests the Administrative Law Judge issue the Modified Protective Order attached as Appendix A to this motion. Good cause exists to issue the Modified Protective Order to provide additional protection for highly commercially sensitive, non-public information related to PGE’s ongoing efforts associated with bid analysis, modeling, evaluation and scoring (“evaluation”) of bids received by PGE in this proceeding.

On May 21, 2021, the Administrative Law Judge issued Protective Order No. 21-161 in this proceeding. On December 2, 2021, the Commission approved PGE’s RFP. On December 6, 2021, PGE issued the final RFP. PGE began receiving bids in response on January 4, 2022. The bids and PGE’s evaluation contain highly confidential, commercial sensitive information of bidders and PGE. Disclosure of this information would violate PGE’s agreements with bidders and could damage and distort PGE’s negotiations process and hinder the Company’s efforts to acquire for its customers the most cost-effective resources.

Because this Highly Confidential Information is extremely sensitive and cannot adequately be protected under the Commission’s General Protective Order, PGE requests that the Commission issue a Modified Protective Order that will allow it to provide the Highly Confidential Information initially only to the Commission Staff and the Independent Evaluator. In accordance with Commission rules<sup>1</sup>, any non-bidding party (like and Citizens Utility Board of Oregon (CUB)) may seek to be qualified to receive the Highly Confidential Information, and if this occurs, PGE and the requesting party will enter into discussions to resolve the request on a case-by-case basis. If the parties cannot resolve the request, they may seek assistance from the Commission.<sup>2</sup>

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

OAR 860-001-0080(3) contains six requirements for seeking a modified protective order. This motion addresses each of these requirements in the following subsections.

### **A. The Parties and Exact Nature of the Information Involved**

#### **(OAR 860-001-0080(3)(a)(A)).**

The following parties have intervened in UM 2166: NIPPC, AWEC, Capital Power Corporation, Renewable NW, Swan Lake North Hydro and FFP Project 101, and NewSun Energy.

PGE’s RFP bid evaluation process involves the review of highly confidential bidder information and the conducting of analysis and creation of equally highly confidential results. The Commission recognizes that bid and bid evaluation information should be protected.<sup>3</sup>

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<sup>1</sup> OAR 860-089-0400

<sup>2</sup> The Commission approved similar restrictions in PacifiCorp’s 2020 RFP. *See* UM 2059, Order No. 21-202.

<sup>3</sup> OAR 860-089-0400. *See also* Order No. 21-202.

**B. Legal Basis for the Claim 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) provides protection against unrestricted discovery of “trade secrets or other confidential research, development, or commercial information.” As discussed above, PGE seeks to protect bidders and PGE evaluation of bids in this RFP.

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>4</sup>

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.<sup>5</sup>

PGE is seeking additional protection for information that is non-public, proprietary and commercially sensitive. PGE's ability to protect such information will directly benefit customers as PGE's successful execution of the RFP will result in the acquisition of the most cost effective resources on behalf of customers. The disclosure of bidder information would have an immediate and adverse effect on PGE's ability to successfully negotiate final agreements in this RFP, and negatively impact future solicitation for resources. Disclosure could impact the competitiveness of future procurement efforts as it would chill the willingness of bidders to put their competitive

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<sup>4</sup> See Uniform Trade Secrets Act, ORS 646.461 to ORS 646.475.

<sup>5</sup> ORS 192.345(2). See generally, ORS 192.410 to ORS 192.505.

information into a process that will subsequently make such information available to third parties, including parties that they compete against. The failure to protect this information will likely limit participation in future solicitations, make those solicitations less competitive, and harm PGE's ability to secure least-cost, least-risk resources for customers.

PGE seeks this Modified Protective Order so that it can designate commercially sensitive bid and bid evaluation information as Highly Confidential Information and minimize the risk of disadvantaging the company in its negotiations, and to 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 attached Modified Protective Order. The Modified Protective Order will protect the Highly Confidential Information by limiting access to the following: Staff and the IE, and non-bidding parties, like CUB, who seek to be qualified during the shortlist acknowledgement proceeding, on a case-by-case basis.

The proposed Modified Protective Order also requires that Highly Confidential Information be maintained in a manner distinct from non-confidential information and from Protected Information. Typically, Highly Confidential Information must be printed on a color of paper that distinguishes it from Protected Information and public information. Like Protected Information, Highly Confidential Information must be stored in a locked room or cabinet, and Highly Confidential Information may not be used or disclosed for any purpose other than participation in this proceeding. However, the Chief Administrative Law Judge outlined temporary measures for handling confidential information stating that for a temporary period Confidential Information will be received and distributed electronically, consistent with the Agency's COVID-19 response as reflected in Order No. 20-088. Therefore, the proposed Modified Protective Order outlines this interim treatment of Highly Confidential Information.

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 the Parties that sign the Modified Protective Order. To be clear, PGE is not requesting Staff or the IE sign the Modified Protective Order, they will receive the Highly Confidential Information in accordance with Commission rules. By identifying specific individuals qualified to access Highly Confidential Information, the parties to the Modified Protective Order will have certainty regarding the permissible disclosure of Highly Confidential Information.

**D. 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 while providing access to entities covered by Commission rules. The goal of PGE's proposed protections is to minimize the number of persons who have access to the Highly Confidential Information and to ensure that it does not fall into the hands of market participants or get used in commercial negotiations. Accordingly, any release of highly sensitive commercial information could significantly adversely impact the RFP and cause harm to market participants, 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 Confidential Information and ensures that persons not covered by the Commission rules will not have access to the Highly Confidential Information.

It is essential to prevent the Highly Confidential Information from being provided, not only to bidders in the RFP, but to any persons who participate or represent participants in the wholesale power markets. The nature of the Highly Confidential Information in this docket is such that even an individual who currently is not participating in the market would not be able to "forget" the

information once it is disclosed in this docket. As a result, if a person reviews the Highly Confidential Information in this docket and later participates in the market, the Highly Confidential Information necessarily would influence their actions, despite the prohibition on its use.

In accordance with Commission rules<sup>6</sup>, PGE asks that the Highly Confidential Information be made available initially only to Commission Staff and its counsel, and the Independent Evaluator. At the final short list acknowledgment phase of this RFP, any non-bidding party may seek to be qualified to receive the Highly Confidential Information, and if this occurs, PGE and the requesting party will enter into discussions to resolve the request on a case-by-case basis. This approach will strike a balance, ensuring that those parties charged by the legislature with protecting the public and customer interests have an opportunity to fully participate in the process as required by Commission rules while at the same time providing PGE with the ability to protect the integrity of the ongoing RFP bid and bid evaluation process.

The additional protection provided by the Modified Protective Order will allow the Parties 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 confidential information.

**E. Detailed 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 the highly sensitive commercial information. Intermediate measures are not available—selective redaction would not be possible

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<sup>6</sup> OAR 860-089-0400.

as Commission rules require PGE to “provide the IE and Commission with full access to its production cost and risk models and sensitivity analyses”.

As explained above, it is necessary to limit access to highly sensitive information because viewing such information would inevitably influence the actions of market participants and potential market participants and those who advise them, and no precautions other than limiting access can prevent this outcome.

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

On January 27, 2022, PGE gave notice to parties in the docket of its intention to seek a modified protective order in this docket.

**III. CONCLUSION**

For these reasons, 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 this docket, UM 2166.

DATED this 27 day of January 2022.

Respectfully submitted,



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ORDER NO.

**Attachment A: Proposed Modified Protective Order**

**MODIFIED PROTECTIVE ORDER**

UM 2166

**Scope of this Order:**

1. This order supplements General Protective Order No. 21-161 and governs the acquisition and use of “Highly Confidential Information” produced or used by any party to docket UM 2166.

**Designation of Highly Confidential Information**

2. Any party may designate as Highly Confidential 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 not adequately protected by the general protective order.
3. To designate information as Highly Confidential Information, a party must place the following legend on the material:

HIGHLY CONFIDENTIAL INFORMATION  
SUBJECT TO MODIFIED PROTECTIVE ORDER NO. 22-\_\_\_

The party should make reasonable efforts to designate as Highly Confidential Information only the portions of the information that satisfies paragraph 2 of this Modified Protective Order.

4. For a temporary period, all Highly Confidential Information in OPUC Docket UM 2166 will be filed with the OPUC Filing Center ([puc.filingcenter@puc.oregon.gov](mailto:puc.filingcenter@puc.oregon.gov)) with a password protected and encrypted electronic ZIP file and distributed to parties electronically who have signed the appropriate protective order, consistent with the Commission’s COVID-19 response, as reflected in Order No. 20-088 and the Chief Administrative Law Judge’s letter dated March 26, 2020.

When the temporary waiver of rules referenced in Order No 20-088 is rescinded, the Highly Confidential Information will be processed as follows:

Each page of a document containing Highly Confidential Information filed with the Commission and served on persons qualified to access Highly Confidential Information under this order must be printed on green paper and placed in a sealed envelope or other appropriate container. Only the portions of the document that fall within ORCP 36(C)(1) may be placed in the envelope/container. The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. \_\_\_\_\_  
AND CONTAINS HIGHLY CONFIDENTIAL

ORDER NO.  
INFORMATION. THE INFORMATION MAY BE SHOWN  
ONLY TO PERSONS QUALIFIED TO ACCESS HIGHLY  
CONFIDENTIAL INFORMATION AS DEFINED IN THE  
ORDER.

5. Highly Confidential Information disclosed by a designated party to a person qualified to access Highly Confidential Information through informal discovery or by means of Commission's Huddle website will be marked "Highly Confidential Information" and uploaded to a file folder designated "highly confidential" in Huddle, if applicable.
6. A party may designate as Highly Confidential Information any information previously provided by giving written notice to the Commission and other parties. Parties in possession of newly designated Highly Confidential 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 Confidential 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 Confidential:**

8. A party may informally challenge any designation of Highly Confidential 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 that the "Highly Confidential Information" designation is necessary. Any party that request that the ALJ hold a conference to help resolve disputes about proper designation.
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 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 Confidential Information:**

12. Only Qualified Persons may access Highly Confidential Information designated by another party under this Modified Protective Order. Persons automatically bound and qualified to access Highly Confidential Information are:
  - a. Commission employees; and
  - b. Assistant Attorneys General assigned to represent the Commission.
  
13. Persons qualified to access Highly Confidential Information upon a signing the Consent to be Bound section of Appendix B are:
  - a. An employee or counsel of the Citizens Utility Board of Oregon; or
  - b. Any other party or party representative, upon the mutual agreement of that party and PGE, 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 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.

**Objection to Access to Highly Confidential Information:**

14. All persons qualified to have access to Highly Confidential Information will have access to Highly Confidential 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 13, the designating party must provide the 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.
  
15. 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 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 Confidential Information may not be disclosed to the person subject to the objection.

**Use of Highly Confidential Information:**

16. All Qualified Persons must take reasonable precautions to keep Highly Confidential Information secure. Qualified Persons may reproduce Highly Confidential Information to the extent necessary to participate in these

proceedings. A Qualified Person may discuss Highly Confidential Information obtained under this order only with other Qualified Persons who have obtained the same information under this order.

17. Without the written permission of the designating party, any person given access to Highly Confidential Information under this order may not disclose Highly Confidential Information for any purpose other than participating in these proceedings.
18. 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.
19. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Highly Confidential 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 Confidential 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 Confidential 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 Highly Confidential Information or Highly Confidential 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 Confidential Information or Highly Confidential Information.

**APPENDIX B: QUALIFICATION OF PERSONS TO RECEIVE  
HIGHLY CONFIDENTIAL INFORMATION  
DOCKET NO. UM 2166**

**I. Consent to Be Bound—Persons Qualified pursuant to Paragraph 13: Highly Confidential Information**

I have read the Modified Protective Order and agree to be bound by the terms in the order. 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. I certify that:

- (a) I am an employee of the Citizens Utility Board of Oregon, and have a legitimate and non-competitive need for the Highly Confidential Information and not simply a general interest in the information; **or**
- (b) I am not an employee of the Citizens Utility Board of Oregon and PGE and I have come to a mutual agreement that I am qualified to receive Highly Confidential Information; **or**
- (c) I am not an employee of the Citizens Utility Board of Oregon and the Administrative Law Judge has issued a ruling allowing my qualification to receive Highly Confidential Information

I provide the following information.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Employer: \_\_\_\_\_

Associated Party: \_\_\_\_\_

Job Title: \_\_\_\_\_

If not employee of party, description of practice and clients:

\_\_\_\_\_