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November 8, 2023

Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97301

Re: UE 427 – PGE’s Renewable Resource Automatic Adjustment Clause
Expedited Consideration Requested

Dear Filing Center:

Enclosed for filing in the above-captioned docket is PGE's Motion for A Modified Protective Order with Proposed Modified Protective Order.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Erin Apperson".

Erin E. Apperson
Assistant General Counsel III

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UE 427**

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Renewable Resource Automatic Adjustment
Clause (Schedule 122) (Clearwater Wind
Project).

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

Expedited Consideration Requested

Pursuant to ORCP 36(C)(1) and OAR 860-001-0080(3), Portland General Electric Company requests the issuance of a Modified Protective Order in this proceeding. Good cause exists to issue an order that supplements the Commission’s General Protective Order, Order No. 23-132. A Modified Protective Order would provide additional protection for highly confidential, sensitive, non-public information in this proceeding. PGE requests the Modified Protective Order attached as Appendix A be issued on an expedited basis.

On October 30, 2023, a matter was opened for this proceeding, including a notice of use of the General Protective Order 23-132. PGE filed to update the Renewable Resources Automatic Adjustment Clause, Schedule 122, and PGE intends to provide supporting information PGE considers highly confidential. Disclosure of information within the general protective order confidential guidelines would represent a broader production than prudence dictates, and its public disclosure could be detrimental to PGE and its customers.

I. 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)).

No parties have intervened in this case, but the service list includes Staff. This proceeding will implicate highly confidential information related to PGE’s third-party pricing and contracts, some of which are subject to non-disclosure agreements. Information, such as PGE’s proprietary modeling code and details regarding energy market activities as well as PGE’s forward position for electricity and natural gas have the potential to harm PGE if made disclosed. Public disclosure of this information would harm PGE and its customers by: (1) violating confidentiality obligations to third parties; and (2) disrupt PGE’s efforts in negotiations relating to the procurement of resources and put PGE at a commercial disadvantage.

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.” 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.¹

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.²

¹ See Uniform Trade Secrets Act, ORS 646.461 to 646.475.

² ORS 192.345(2).

PGE requests a Modified Protective Order so it may designate commercially sensitive information as highly confidential and minimize the risk of violating obligations to third parties under existing agreements and otherwise comply with applicable law as well as avoiding harm to resource procurement efforts from the disclosure of highly sensitive pricing information.

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 its counsel; the Citizens' Utility Board and its counsel; and representatives for other parties in this docket who seek to be qualified, on a case-by-case basis, if agreed to by PGE or ordered by the Administrative Law Judge. The Commission and ALJ assisting the Commission would also have access to Highly Confidential Information.

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. Like Protected Information, Highly Confidential Information must be maintained in a separate, secured location, and Highly Confidential Information may not be used or disclosed for any purpose other than participation in this proceeding. The proposed Modified Protective Order outlines treatment of Highly Confidential Information consistent with those outlined in Order No. 23-132, which modified the Commission's standard form for General Protective Order.³

PGE requests that the Commission enter the proposed Modified Protective Order that is included in this Motion as Appendix A. The terms of the Modified Protective Order are narrowly tailored. The proposed Modified Protective Order will allow the transmission of such information

³ Docket No. UM 2054.

to the Parties that sign the Modified Protective Order. To be clear, PGE is not requesting Staff sign the Modified Protective Order; they will receive the Highly Confidential Information in accordance with Commission rules.

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 Highly Confidential 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 violate any agreement or contract held with third parties.

The additional protection provided by the Modified Protective Order will allow the Parties access to the information in a manner that protects highly sensitive Highly Confidential Information. The requested Modified Protective Order will also help reduce the risk of an inadvertent disclosure of the highly sensitive Highly Confidential 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 Highly Confidential information. Intermediate measures are not available—selective redaction would not be possible.

As explained above, it is necessary to limit access to highly sensitive information because viewing such information would inevitably create a risk of disclosure of highly confidential information that could impact PGE's obligations to third parties and impair PGE's ability to

negotiate competitive agreements and no precautions other than limiting access can prevent this outcome.

F. Certification of Conferring with Parties (OAR 860-001-0080(3)(a)(F) and OAR 860-001-0420(6)(a)).

On November 7, 2023, PGE gave notice to Staff of its intention to seek a modified protective order in this docket. At the time of filing, PGE has not received feedback on its motion.

G. Expedited Motion (OAR 860-001-0420(6)).

To respond to filing deadlines PGE seeks expedited treatment and requests the time to respond to the Motion be shortened to two days.

II. CONCLUSION

For these reasons, PGE respectfully requests that the Commission issue a Modified Protective Order in the format provided in Appendix A to this Motion for the purposes of this docket, UE 427.

DATED this 8th day of November, 2023.

Respectfully submitted,

PORTLAND GENERAL ELECTRIC COMPANY



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Appendix A: Proposed Modified Protective Order

MODIFIED PROTECTIVE ORDER
UE 427

Scope of this Order:

1. This order supplements General Protective Order No. 23-132 and governs the acquisition and use of “Highly Protected Information” produced or used by any party to this docket.

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) or the exemptions under Oregon Public Records law, ORS 192.345 and 192.355 (OPRL);
 - (b) Is not publicly available; and
 - (c) Is not adequately protected by the 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. 23- ____

4. 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. Each page of a document containing Highly Confidential Information filed with the Commission or provided to Qualified Persons under this order, must be clearly marked as Highly Confidential Information and maintained in a separate, secure folder. Any file or folder containing Highly Confidential Information must be designated "Highly Confidential." If the cells in a spreadsheet or other native document include information that has been designated as highly confidential and that would be impractical or unduly burdensome to mark as required above, the party designating information as highly confidential 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. All Highly Protected Information in OPUC Docket UE 427 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) for material PGE identifies as highly sensitive infrastructure information, through physical inspection at a place identified by PGE, or in a manner mutually agreed upon by the requestor and PGE.

6. 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" in Huddle, if applicable.
7. 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.
8. 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:

9. 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 that the "Highly Protected Information" designation is necessary. Any party that requests that the ALJ hold a conference to help resolve disputes about proper designation.
10. 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.
11. 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.

12. 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:

13. 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.
14. Persons qualified to access Highly Protected Information upon a signing the Consent to be Bound section of Appendix B are:
 - (a) An employee or counsel of PGE or the Citizens Utility Board of Oregon and have a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information; 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.

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 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.

Objection to Access to Highly Protected Information:

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 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, and only in relation to this proceeding.
18. Without the written permission of the designating party, any person given access to Highly Protected Information under this order may not use or 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 or 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 Protected Information or Highly Protected Information.

**APPENDIX B: QUALIFICATION OF PERSONS TO RECEIVE
HIGHLY PROTECTED INFORMATION
DOCKET NO. UE 412**

I. Consent to Be Bound—Persons Qualified pursuant to Paragraph 13: Highly Protected 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 PGE or the Citizens Utility Board of Oregon; **or**
- (b) I am not an employee of PGE or the Citizens Utility Board of Oregon, and I have and have a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information and have come to a mutual agreement that I am qualified to receive Highly Protected 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 Protected 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:
