



Portland General Electric Company
Legal Department
121 SW Salmon Street • 1WTC1301 • Portland, OR 97204
Phone 503-464-7822 • Fax 503-464-2200
portlandgeneral.com

Loretta I. Mabinton
Associate General Counsel
loretta.mabinton@pgr.com

February 16, 2021

Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
P.O. Box 1088
Salem, OR 97308-1088

**Re: UM 1953 – PORTLAND GENERAL ELECTRIC COMPANY, Investigation into
Proposed Green Tariff**

Dear Filing Center:

Enclosed is Portland General Electric Company's Response to Calpine Energy Solutions, LLC's Objection.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Loretta Mabinton". The signature is written in a cursive, flowing style.

Loretta Mabinton
Associate General Counsel

LM: dm

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1953

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Investigation into Proposed Green Tariff.

PORTLAND GENERAL ELECTRIC
COMPANY'S RESPONSE TO CALPINE
ENERGY SOLUTIONS LLC'S
OBJECTION

Pursuant to Oregon Rules of Civil Procedure ("ORCP") 36(C)(1) and General Protective Order No. 18-260 issued in this docket, Portland General Electric Company ("PGE") submits this response to the February 10, 2021 Calpine Energy Solutions, LLC ("Calpine") Objection to PGE's designation of protected information.

I. INTRODUCTION AND SUMMARY

A. Procedural History

This docket was initiated on May 24, 2018, by Administrative Law Judge Kirkpatrick at a prehearing conference. General Protective Order No. 18-260 was issued on July 3, 2018. On September 15, 2020, in accordance with Oregon Administrative Rule 860-001-0080(3), PGE filed a Motion for a Modified Protective Order to add the designation of "Highly Protected Information", and Calpine did not object. The Modified Protective Order No. 20-302 was issued September 16, 2020. Calpine filed signatory pages to Modified Protective Order No. 20-302 on the same day. The Modified Protective Order provides additional protection for highly commercially sensitive, non-public information related to PGE's power supply agreement. In its Motion for the Modified Protective Order, PGE stated that it was necessitated as a result of certain Data Requests served on PGE.

In accordance with Oregon Revised Statute 757.205 and the Public Utility Commission of Oregon (“OPUC” or “Commission”) Order Number 17-095, PGE made its Compliance filing for the remaining capacity of the Customer Supply Option under the Green Energy Affinity Rider (“GEAR”) on January 22, 2021, and then a Revised Compliance filing with the Commission on February 5, 2021. The Revised Compliance filing was made following Calpine’s informal dispute regarding PGE’s designation of Highly Confidential information, and also after consulting Commission Staff and the Department of Justice. The Revised Compliance filing changed a confidentiality designation in the accompanying Attachment A workpaper from Highly Confidential to “regular” Confidential. PGE’s intent, in filing the revision, was to preserve confidentiality and allow Calpine’s experts the ability to review the energy and capacity credit calculations. Had the credit calculation information continued to be designated Highly Confidential, it would be reviewable only by Calpine’s counsel. Calpine’s Senior Consultant signed General Protective Order No. 18-260 on February 8, 2021.¹ Other information in the workpaper that remains under the Highly Confidential designation includes price, annual PPA costs, and the annual net benefits associated with the contract.

On February 10, 2021, Calpine filed its Objection to PGE’s Designation of Protected Information with the OPUC’s Filing Center, objecting to the “over-designation” of sensitive commercial information by PGE.² Specifically, Calpine objects to PGE’s designation under the General Protective Order No. 18-260, of the energy and capacity credit in PGE’s Revised Compliance filing. Calpine argues for transparency and accountability, oversimplifying and incorrectly calling the designated information utility “avoided cost”.³ Calpine requests that the Commission order removal of the confidentiality designation, which will result in the information being put in the public domain.

¹ Shortly after the Motion for Protective Order was granted and the General Protective Order No. 18-260 issued, on July 6, 2018 Calpine Energy Solutions, LLC had two persons sign it: Gregory Adams and Peter Richardson.

² <https://edocs.puc.state.or.us/efdocs/HAE/um1953hae14644.pdf>; UM 1953 - Calpine’s Comments (filed February 10, 2021) at 3.

³ UM 1953, Calpine’s Objection at 1.

PGE has designated the capacity credit value, energy credit value, and the inputs used to derive those values as Confidential. The designation of Confidential or Highly Confidential information is limited by the terms of the Protective Orders issued in this docket pursuant to ORCP 36. ORCP 36 derives from Federal Rules of Civil Procedure (“FRCP”) 26(b)⁴ and provides for the protection of commercial information. FRCP 26(b)(5)(c)(G) contains similar language now.⁵ The Modified Protective Order states that if the asserting party reasonably determines that the information falls within the scope of ORCP 36 (C)(1), is not publicly available, and is not adequately protected by the general protective order, then that party may designate the information as Highly Protected Information.⁶ Under the Modified Protective Order, a party challenging the designation of Highly Protected Information does so by notifying the designating party, that then has the burden to show that the challenged information is covered by ORCP 36(C)(1) and that the designation is necessary. Calpine has challenged PGE’s designation and filed a written objection with the OPUC Filing Center.

B. Context and Summary

Calpine’s challenge arises in the context of PGE’s compliance filing, following the subscription by a PGE customer to the remaining capacity of PGE’s GEAR offered through tariff Schedule 55. According to the tariff, following the subscription, PGE files with OPUC Staff, a copy of the customer agreement and workpapers showing the calculation of energy and capacity credits provided to the subscribing customer. A customer participating in the GEAR pays the cost of the additional green energy generation (power purchase agreement) and administrative costs and receives a credit for the energy and capacity value brought to the system from this incremental green energy generation that benefits all customers. The energy and capacity credit provided is resource specific and is not PGE’s Schedule 201 avoided cost.⁷ The purpose of the compliance

⁴ As described in *Stevens v. Czernick*, 84 P.3d 140 (Or. 2004), at 145.

⁵ “requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way...”

⁶ <https://apps.puc.state.or.us/orders/2020ords/20-302.pdf>, Appendix A, page 1.

⁷ Commission Order No. 19-075 discusses the method of calculating the energy and capacity credits.

filing is to allow Staff review and determination that PGE followed the Commission directed methodology in calculating those credits.⁸ PGE understands Calpine’s objection is directed to the credits and not to the information PGE has designated Highly Confidential under Protective Order No. 20-302. However, at the heart of PGE’s designation of the credits as confidential, is that if they were made public, one could back into the PPA price, which is Highly Confidential.

II. LEGAL STANDARD

For the Modified Protective Order to be issued, PGE first demonstrated why the information related to power supply agreements falls within ORCP 36(C)(1). The ORCPs were designed for an orderly conduct of adversarial proceedings and balances the rights and responsibilities of litigants, while protecting the interests of persons who are not parties to the dispute. Under ORCP 36(C)(1), the Commission is required to protect the information if it is ‘commercial information’. Oregon Courts have interpreted confidential information in the context of ORCP 36 to “mean and include, *without limitation, any information* that concerns or relates to trade secrets, non-public research, development, *commercial, financial, pricing*, budgeting and/or accounting information, non-public information about existing and potential customers, marketing studies, performance and projections, non-public business strategies, decisions and/or negotiations, personnel compensation, evaluations and other employment information, confidential information about affiliates, parents, subsidiaries, and *third parties* with whom the parties to this action have or have had business relationships, and personal medical, educational, legal or other private records...”⁹ (Emphasis added). The Commission has interpreted ORCP 36(C)(1) to include various types of information meriting a higher level of protection.¹⁰ The information that Calpine has asked to be made public is commercial information. It is commercial information subject to the protections of ORCP 36(C)(1) because parties could use the

⁸ At the direction of OPUC Staff, rather than file the compliance with Staff (as noted in Schedule 55), PGE made the compliance filing with the Commission.

⁹ David B. Sale et al. v. TriMet et al., Or.Cir. 2011 at 3.

¹⁰ To include, respectively: “contracts...[and] price information and other terms and conditions” in UM 2145, Order No. 21-021 at 2; “...financial and strategic information...” in UM 2153, Order No. 21-018 at 1; “proprietary cost data and models...confidential market analyses and business projections...” in UE 384, Order No. 20-394 at 1; “certain documents responsive to data requests...” in UM 2032, Order No, 20-301 at 1.

energy and capacity credit values to back-solve for an approximate power purchase agreement price. This is easily achieved since the subscription price is equal to the PPA price less credits, plus admin fee, where the admin fee is generally minimal. This would violate PGE's obligation to protect confidential information under the terms of its agreements with suppliers and would jeopardize true competition and the benefits that accrue to PGE's customers from having a competitive process for procurement. These contracts are entered into via a competitive solicitation, and publicly sharing the credit values will reveal the maximum price that PGE would accept. If this were in the public domain, bidders in competitive solicitations, armed with the information, would have a competitive advantage and provide PGE with a higher PPA price than they would have otherwise, leading to higher costs for cost-of-service customers.

III. ARUGMENT

Calpine wants this information public (not because it is necessary for the reason the information was provided in this docket, i.e. the determination by the Commission of whether or not the filing was compliant) "...for providing stakeholders, *potential suppliers*, and the Commission itself with important data points in the future."¹¹ (Emphasis added). Calpine's real interest is in its role as an electricity service supplier, a competitor. The Commission and Commission Staff, and stakeholders who execute the protective order, have access to the information. It is worth noting that Calpine's expert has access to the data. It is also worth noting that Calpine did not object to PGE's designation in the first of its two compliance filings for the GEAR tranche 1 subscriptions.¹² In support of its objections, Calpine makes the assertions below. PGE addresses each assertion in turn and explains why each is invalid or inapplicable to the information at issue:

¹¹ UM 1953 – Calpine's Objection at 5.

¹² See: <https://edocs.puc.state.or.us/efdocs/HAD/um1953had15402.pdf>; PGE filed the first compliance filing, designating the credit calculation in the accompanying workpaper, Attachment A, as confidential under General Protective Order No. 18-260, on September 13, 2019

1. *The rate credit is PGE's avoided cost.*¹³

The energy and capacity credits are not PGE's avoided cost rates. Avoided cost rates are those that PGE offers under must take contracts, e.g. from qualifying facilities (QF) based on a Commission established methodology for setting such avoided costs. PGE's renewable avoided cost rates are set forth in Schedule 201 and based on IRP projected costs of PGE's renewable avoided resource, which is a generic gorge wind proxy resource and adjustments for QF resource fuel type (e.g. wind or solar) capacity contributions based on the generic capacity contributions established in PGE's IRP and the IRP projected cost of proxy capacity. The generic renewable resources used to set PGE's avoided costs are outdated by the time they are used in setting avoided costs for QFs and do not represent the costs that result from a competitive solicitation. The credits set forth in the GEAR compliance filing, in contrast, are calculated using bidder supplied resource-specific production information for actual resources under development, PGE's projections of hourly power prices, and the unique contribution the specific resource brings to meeting PGE's then current capacity needs, if any. While PGE makes use of common analytical tools and models across its avoided costs calculations and the GEAR calculations, the common input between PGE's filed renewable avoided costs and the GEAR calculation is the use of the IRP projected cost of proxy capacity which is already publicly available in PGE's IRP filings. The remainder of the inputs are GEAR resource specific and uses a value determination methodology that is not identical to PGE's avoided costs methodology.¹⁴ Calling this credit information PGE's avoided costs is disingenuous and inappropriate.

¹³ UM 1953 – Calpine's Objection at 1.

¹⁴ The Commission Order approving PGE's GEAR, affirms that the credits are based on the supplying renewable resource: "Participating customers receive credits for energy and capacity provided by the PPA projects." Order No. 19-075 at 5. The Commission Order No. 19-075, in rejecting PGE's proposal for capacity credit calculation using a QF method, the value of PGE's proxy capacity resource, the capacity contribution of the PPA resource, and PGE's sufficiency/deficiency period, instead adopted the Staff proposal to adopt the capacity methodology from PGE's IRP. This method uses modeling to calculate the capacity contribution of a resource and provides a value based on least cost planning. Order at pages 6-7. <https://apps.puc.state.or.us/orders/2019ords/19-075.pdf>

2. *The Commission has an obligation to protect transparency in utility regulation.*¹⁵

Calpine cites to the National Association of Regulatory Utility Commissioners' primer on the Uniform Systems of Accounts, and draws the broad conclusion that in all Commission proceedings "...only the possibility of preventing disclosure of information that presents a security risk or could give a utility's competitors and (sic) unfair advantage..."¹⁶ should be carved out from public disclosure. The data in question here falls squarely within the 'give a utility's competitors an unfair advantage' standard. Calpine can and does compete with PGE and with other entities that seek to provide power to customers eligible for or participating in the GEAR program. But just as importantly, this conclusion disregards Oregon law. The ORCP clearly provides protection for other reasons. ORCP 36(C)(1) provides that a court may limit disclosure of a "trade secret or other confidential research, development, or commercial information."¹⁷

3. *This is analogous to the Commission's competitive bidding rules for acquisition of major generation resources.*¹⁸

Calpine correctly points out that the competitive bidding rules (CBRs) require utilities to publicly file the average bid score and average price of the resources on the final shortlist after conclusion of competitive solicitations. However, the CBRs do not require PGE to make public information, such as the credit calculations, which would allow competitors or other entities to potentially solve for the price pertaining to a specific bid. Furthermore, the CBRs require averaging across multiple resources and bids, where the information Calpine is requesting be made public is specific to a single resource and is not a direct comparison. The CBRs are designed to protect competitors' information so as to encourage robust participation in Oregon's procurement efforts and to benefit customers.

¹⁵ UM 1953 – Calpine's Objection at 4.

¹⁶ UM 1953 – Calpine's Objection at 5.

¹⁷ See also *Sale v. Trimet*, supra

¹⁸ UM 1953 – Calpine's Objection at 7.

Applying Calpine's analogy would require the Commission to protect the information that Calpine seeks to make public.

4. *Making the actual credit offered public will assist Calpine Solutions and other potential suppliers.*¹⁹

It is worth noting that the data Calpine seeks to make public is a product of another supplier's successful acquisition of a subscriber for the GEAR product. The lack of a public credit value was obviously not a deterrent or obstacle to one of Calpine's competitors successfully obtaining a subscriber for its resource. The Commission should disregard this attempt to muddle the issues. Calpine's inability to meaningfully ascertain a ballpark value of the credit or to procure subscribers is therefore an indication of how Calpine goes about acquiring customers, not the lack of a public credit value.

IV. CONCLUSION

For the reasons articulated above and for the continued protection of commercial information, the Administrative Law Judge should deny Calpine's objections, and protect the information pursuant to the ORCP and the protective orders entered in this docket.

DATED this 16th day of February 2021.

Respectfully submitted,



Loretta Mabinton, OSB No. 020710
Associate General Counsel
Portland General Electric Company
121 SW Salmon Street, 1WTC1301
Portland, Oregon 97204
(503) 464-7822 (phone)
(503) 464-2200 (fax)
loretta.mabinton@pgn.com

¹⁹ UM 1953 – Calpine's Objection at 7.