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August 12, 2022

VIA ELECTRONIC FILING

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

Re: Docket LC 78 – In the Matter of Idaho Power Company’s 2021 Integrated Resource Plan (“IRP”).

Attention Filing Center:

Attached for filing in the above-captioned docket is Idaho Power Company’s Motion for Modified Protective Order. Expedited consideration is requested.

Please contact this office with any questions.

Sincerely,

A handwritten signature in black ink that reads "Alisha Till". The signature is written in a cursive, flowing style.

Alisha Till

Attachments

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

LC 78

In the Matter of:

IDAHO POWER COMPANY’S

2021 Integrated Resource Plan.

**MOTION FOR MODIFIED
PROTECTIVE ORDER**

Expedited Consideration Requested

I. INTRODUCTION

Pursuant to ORCP 36(C)(1), OAR 860-001-0420, and OAR 860-001-0080(3), Idaho Power Company (“Idaho Power” or “Company”) moves the Public Utility Commission of Oregon (“Commission”) for entry of a Modified Protective Order in its 2021 Integrated Resource Plan (“IRP”) proceeding, Docket LC 78. Specifically, Idaho Power requests the Commission 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 Idaho Power’s ongoing efforts associated with competitive bidding information received by Idaho Power in its Requests for Proposal (“RFPs”).¹

On June 8, 2022, the Administrative Law Judge issued Protective Order No. 22-212 in this proceeding. Commission Staff submitted opening comments regarding Idaho Power’s 2021 IRP on July 7, 2022. In these comments, Commission Staff requested that Idaho Power “[p]rovide the capital costs from battery storage bids Idaho Power has received in its current RFPs.”² The bids contain highly confidential, commercially sensitive information of bidders. Disclosure of this

¹ In response to Staff’s Request for Company Reply Comments 5, Idaho Power incorrectly stated that large customer load forecast information would require additional protections under a Modified Protective Order. Idaho Power Company’s Reply Comments at 10 n. 21 (Aug. 4, 2022). Idaho Power has since determined that General Protective Order No. 22-212 is sufficient to protect customer load forecast information, and the Company will provide an unredacted copy of its Reply Comments in compliance with Protective Order No. 22-212.

² Staff’s Opening Comments at 21, 32 (July 7, 2022).

1 information would violate Idaho Power’s agreements with bidders, could damage and distort the
2 Company’s negotiations process, and hinder Idaho Power’s efforts to acquire the most cost-
3 effective resources for its customers.

4 Because this Highly Confidential Information is extremely sensitive and cannot adequately
5 be protected under Protective Order No. 22-212, Idaho Power requests that the Commission issue
6 a Modified Protective Order that will allow it to provide the Highly Confidential Information
7 initially only to Commission Staff and the Citizens’ Utility Board of Oregon (“CUB”) at its request
8 and consent to be bound. Any other party to this proceeding may seek to be qualified to receive
9 the Highly Confidential Information, and if this occurs, Idaho Power and the requesting party will
10 enter into discussions to resolve the request on a case-by-case basis. If the parties cannot resolve
11 the request, they may seek assistance from the Commission.³

12 II. REQUEST FOR ADDITIONAL PROTECTION

13 OAR 860-001-0080(3) contains six requirements for seeking a modified protective order.
14 This Motion addresses each of these requirements below.

15 A. OAR 860-001-0080(3)(a)(A) – The Parties and Exact Nature of the Information 16 Involved.

17 The following parties have intervened in LC 78: the Renewable Energy Coalition (“REC”),
18 CUB, Renewable Northwest, and the STOP B2H Coalition (“STOP B2H”).

19 Idaho Power’s Reply Comments for this proceeding include the review of highly
20 confidential bidder information. The Commission recognizes that such competitive bidding
21 information should be protected.⁴

³ OAR 860-089-0400(6).

⁴ OAR 860-089-0400(6); *see also* OAR 860-001-0080(3); ORCP 36(C)(1) (providing protection against unrestricted discovery of “trade secret[s] or other confidential research, development, or commercial information”); *In re Investigation into the Cost of Providing Telecommunication Service*, Docket UM 351, Order No. 91-500 (1991)

1 **B. OAR 860-001-0080(3)(a)(B) – Legal Basis for the Claim the Information is Protected**
2 **Under ORCP 36(C)(1) or the Public Records Law.**

3 ORCP 36(C)(1) provides protection against unrestricted discovery of “trade secrets or other
4 confidential research, development, or commercial information.” As discussed above, Idaho
5 Power seeks to protect competitive bidding information in this proceeding.

6 A “trade secret” is information, including cost data, that: (a) derives independent economic
7 value, actual or potential, from not being generally known to the public or to other persons who
8 can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are
9 reasonable under the circumstances to maintain its secrecy.⁵

10 In addition, the Oregon Public Records Law exempts from disclosure public records that
11 are “trade secrets” that:

12 [M]ay include, but are not limited to, any formula, plan, pattern, process, tool,
13 mechanism, compound, procedure, production data, or compilation of information
14 which is not patented, which is known only to certain individuals within an
15 organization and which is used in a business it conducts, having actual or potential
16 commercial value, and which gives its user an opportunity to obtain a business
17 advantage over competitors who do not know or use it.⁶

18
19 Idaho Power is seeking additional protection for information that is non-public, proprietary, and
20 commercially sensitive. Idaho Power’s ability to protect such information will directly benefit
21 customers as Idaho Power’s successful execution of RPFs will result in the acquisition of the most
22 cost-effective resources on behalf of customers. The disclosure of competitive bidder information
23 would have an immediate and adverse effect on Idaho Power’s ability to successfully solicit and
24 negotiate agreements in RFPs. Disclosure could impact the competitiveness of procurement efforts
25 as it would chill the willingness of bidders to put their competitive information into a process that

(recognizing that protective orders are a reasonable means to protect “the rights of a party to trade secrets and other confidential commercial information” and “to facilitate the communication of information between litigants”).

⁵ ORS 646.461(4).

⁶ ORS 192.345(2).

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

5 Idaho Power seeks this Modified Protective Order so that the Company can designate
6 commercially sensitive bid information as Highly Confidential Information to comply with its
7 non-disclosure agreements with bidders, minimize the risk of disadvantaging the Company in its
8 negotiations, and to help ensure that ongoing procurement efforts are competitive.

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

10 Idaho Power requests that the Commission enter the attached Modified Protective Order.
11 The Modified Protective Order will protect the Highly Confidential Information by limiting access
12 to the following parties: Commission and Commission Staff, and CUB at its request and consent
13 to be bound. Highly Confidential Information will be provided to other parties in this proceeding
14 only on a case-by-case basis, with the Commission resolving any disputes.

15 The proposed Modified Protective Order also requires that Highly Confidential
16 Information be maintained in a manner distinct from non-confidential information and from
17 Protected Information. Typically, Highly Confidential Information must be printed on a color of
18 paper that distinguishes it from Protected Information and public information. Like Protected
19 Information, Highly Confidential Information must be stored in a locked room or cabinet, and
20 Highly Confidential Information may not be used or disclosed for any purpose other than
21 participation in this proceeding. However, the Chief Administrative Law Judge outlined temporary
22 measures for handling confidential information stating that for a temporary period Confidential
23 Information will be received and distributed electronically, consistent with the Agency's

1 COVID-19 response as reflected in Order No. 20-088. Therefore, the proposed Modified
2 Protective Order outlines this interim treatment of Highly Confidential Information.

3 Idaho Power requests that the Commission enter the proposed Modified Protective Order
4 that is included in this Motion as Appendix A. The terms of the Modified Protective Order are
5 narrowly tailored and intended to apply only to commercially sensitive information of bidders.
6 The proposed Modified Protective Order will allow the transmission of such information to the
7 parties that sign the Modified Protective Order. To be clear, Idaho Power is not requesting that
8 Staff sign the Modified Protective Order as they will receive the Highly Confidential Information
9 in accordance with Commission rules. By identifying specific individuals qualified to access
10 Highly Confidential Information, the parties to the Modified Protective Order will have certainty
11 regarding the permissible disclosure of Highly Confidential Information.

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

13 The requested Modified Protective Order will protect against widespread disclosure of
14 commercially sensitive information that is protectable under law while providing access to entities
15 covered by Commission rules. The goal of Idaho Power’s proposed protections is to minimize the
16 number of persons who have access to the Highly Confidential Information and to ensure that it
17 does not fall into the hands of market participants or get used in commercial negotiations.
18 Accordingly, any release of highly sensitive commercial information could significantly adversely
19 impact ongoing RFPs and cause harm to market participants, Idaho Power, and its customers. For
20 this reason, it is important that the Commission issue a Modified Protective Order that limits the
21 number of people who receive Highly Confidential Information and ensures that persons not
22 covered by the Commission rules will not have access to the Highly Confidential Information.

1 It is essential to prevent the Highly Confidential Information from being provided to any
2 persons who participate or represent participants in the wholesale power markets. The nature of
3 the Highly Confidential Information in Idaho Power's Reply Comments is such that even an
4 individual who currently is not participating in the market would not be able to "forget" the
5 information once it is disclosed in this docket. As a result, if a person reviews the Highly
6 Confidential Information in this docket and later participates in the market, the Highly Confidential
7 Information necessarily would influence their actions, despite the prohibition on its use.

8 Accordingly, Idaho Power requests that the Highly Confidential Information be made
9 available initially only to Commission Staff, its counsel, the Commissioners, and CUB at its
10 request and consent to be bound. Any other party may seek to be qualified to receive the Highly
11 Confidential Information, and if this occurs, Idaho Power and the requesting party will enter into
12 discussions to resolve the request on a case-by-case basis. This approach will strike a balance,
13 ensuring that those parties charged by the legislature with protecting the public and customer
14 interests have an opportunity to fully review the Highly Confidential Information, while at the
15 same time protecting ongoing solicitations.

16 The additional protection provided by the Modified Protective Order will allow the parties
17 access to the information in a manner that protects highly sensitive commercial information. The
18 requested Modified Protective Order will also help reduce the risk of an inadvertent disclosure of
19 the highly sensitive commercial information. Protective Order No. 22-212 is insufficient as it is
20 general in nature and does not have adequate safeguards to protect highly confidential information.

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

23 As discussed above, Protective Order No. 22-212 is insufficient to protect the highly
24 sensitive commercial information. Intermediate measures are not available—selective redaction

1 would not be possible and would hinder a complete and thorough review by the Commission and
2 Staff of materials related to their request. It is necessary to limit access to highly specific
3 information regarding bilateral negotiations because viewing such information would inevitably
4 influence the actions of market participants and potential market participants, and no precautions
5 other than limiting access can prevent this outcome.

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

7 During the week of August 1, 2022, Idaho Power discussed with each of the parties its
8 intent to seek a modified protective order in this docket. On August 9, 2022, the Company further
9 sent parties and Staff copies of the Modified Protective Order (Appendix A) and Consent Form
10 (Appendix B), requesting parties' positions on the Order. Staff, REC and Renewable Northwest
11 have all indicated that they do not object to the Modified Protective Order. STOP B2H has not yet
12 responded at the time of the filing of this Motion.

13 **III. CONCLUSION**

14 For these reasons, Idaho Power respectfully requests that the Commission issue a Modified
15 Protective Order in the format provided as Appendix A to this Motion for the purposes of this
16 docket, LC 78.

17 DATED this 12th day of August 2022.

McDOWELL RACKNER GIBSON PC



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Appendix A: Proposed Modified Protective Order

MODIFIED PROTECTIVE ORDER

Docket LC 78

Scope of this Order:

1. This order supplements General Protective Order No. 22-212 and governs the acquisition and use of “Highly Confidential Information” produced or used by any party to Docket LC 78.

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 Public Utility Commission of Oregon (“OPUC” or “Commission”) Docket LC 78 will be filed with the OPUC Filing Center (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.

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 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 the 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 may request that the Administrative Law Judge ("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 (5) 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 (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 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 Idaho Power 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 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 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 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 (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 Confidential Information or Highly Confidential Information.

**APPENDIX B: QUALIFICATION OF PERSONS TO RECEIVE
HIGHLY CONFIDENTIAL INFORMATION**

Docket LC 78

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 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. 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 Idaho Power Company 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:
