



Portland General Electric Company

Legal Department
121 SW Salmon Street • 1WTC1301 • Portland, Oregon 97204
Phone 503-464-7371 • Fax 503-464-2200
portlandgeneral.com

Brendan J. McCarthy

Assistant General Counsel II
brendan.mcarthy@pgn.com

March 29, 2024

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: PCN 6 – Petition for Certificate of Public Convenience and Necessity

Dear Filing Center:

Enclosed for filing in the above-captioned dockets is Portland General Electric Company's (PGE) Motion for Modified Protective Order, which contains Appendix A-C. A copy of the word version of Appendix A, the proposed order, is enclosed for your use.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Brendan J. McCarthy".

Brendan J. McCarthy
Assistant General Counsel II

BJM:lad

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 6

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Petition for Certificate of Public Convenience
and Necessity.

**MOTION FOR MODIFIED
PROTECTIVE ORDER**

Expedited Consideration Requested

I. INTRODUCTION

Pursuant to OAR 860-001-0080(3) and OAR 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 to supplement the Commission’s General Protective Order in this proceeding. Specifically, PGE requests the Administrative Law Judge (ALJ) issue the Modified Protective Order attached as Appendix A to this motion. The General Protective Order only governs Protected Information, and a Modified Protective Order would provide additional protection for Highly Protected Information, specifically including Critical Energy Infrastructure Information (CEII). PGE requests expedited consideration of this motion in order to provide Highly Protected Information in its forthcoming responses to the Staff of the Public Utility Commission’s (Staff) discovery requests and future discovery that may be requested in this proceeding.

II. BACKGROUND

Pursuant to notice filed with this motion and Order No. 23-132, a General Protective Order applies to this docket. In April, PGE will be filing its Petition for Certificate of Public Convenience and Necessity and Responses to Standard Data Requests.

With a Modified Protective Order in place, PGE will be able to respond to future discovery requests in this proceeding that PGE anticipates will include requests that ask for Highly Protected Information such as CEII.

III. 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 order.

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

At the time of filing this motion, the only party to this case is PGE. This proceeding will implicate Highly Protected Information related to PGE's distribution and transmission resources, including CEII. CEII is specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure, physical or virtual, that relates to details about that infrastructure, including distribution or transmission, could be useful to a person planning an attack and gives strategic information beyond the location of the infrastructure. Public disclosure of this information would harm PGE and its customers by risking the security of PGE's critical infrastructure and potentially public health and safety.

Other Highly Protected Information may also be requested by parties in discovery during the course of this proceeding. PGE will be able to expedite its response to discovery with a Modified Protective Order in place.

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)).

The CEII at issue in this proceeding is prohibited from disclosure by federal regulations, including the Freedom of Information Act, and is therefore exempt from disclosure under Oregon's Public Records Law, specifically ORS 192.355(8), exempting from disclosure any public records or information the disclosure of which is prohibited by federal law or regulation. CEII is a type of

Highly Protected Information because it includes specific engineering or detailed design information regarding proposed or existing critical energy infrastructure that relates to the transmission or distribution of energy. Absent the Modified Protective Order, disclosure of this information could negatively affect the security of the transmission system and public health or safety. Additionally, PGE anticipates that commercially sensitive information, either about PGE or its customers, may be requested through discovery, and proposes that the Modified Protective Order should also be broad enough to protect commercially sensitive information consistent with ORCP 36(C)(1). 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 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.¹ In addition, Oregon Public Records Law conditionally exempts from disclosure public records that are “trade secrets” that “may include . . . production data, or compilation of information which is not patented . . . 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 The CPCN is being filed for a transmission system project. Specific load and load forecasting information is part of the planning for that project which could be used by persons to gain a business advantage over those who do not know or use it.

It is efficient to include both categories of information in the Modified Protected Order so that PGE will be able to promptly share such information in the event that additional discovery served in this case seeks to obtain commercially sensitive information.

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

² ORS 192.345.

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

PGE requests that the Commission enter the attached Modified Protective Order in Appendix A. The Modified Protective Order will protect the Highly Protected Information by limiting access to Staff and counsel assigned to represent the Commission and counsel for other parties in this docket who seek to be qualified and who execute the Modified Protective Order. Paragraph 14 of Appendix A outlines a process for additional parties (such as consultants) to seek access to Highly Protected Information on a case-by-case basis. The Commission and the ALJ assisting the Commission would also have access to Highly Protected Information.

The proposed Modified Protective Order also requires that Highly Protected Information be maintained in a manner distinct and more restrictive than that classified as either non-confidential information or Protected Information. Previously, Highly Protected Information was printed on a color of paper that distinguished 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.

However, the Chief ALJ outlined new measures for handling confidential information stating that until and unless the Commission's Filing Center changes the process, confidential information will be received and distributed electronically, consistent with the Agency's COVID-19 response as reflected in Order No. 20-088.

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 sensitive information that is protectable under law while enabling PGE to make information available consistent with the highly sensitive nature of the information. The goal of PGE's

proposed protections is to minimize the number of persons who have access to the Highly Protected Information and to reduce the likelihood of public disclosure.

PGE asks that the Highly Protected Information be made available only to the parties specified in Appendix A., This approach will strike a balance, ensuring that those parties charged by statute with protecting the public and customer interests have the full opportunity to vet information such as technical drawings of PGE's infrastructure (as well as counsel or consultants for other parties that execute the Modified Protective Order), while at the same time providing PGE with the ability to protect the integrity of its CEII and other confidential information.

The additional protection provided by the Modified Protective Order will allow parties access to the information in a manner that protects highly sensitive information. The requested Modified Protective Order will also help reduce the risk of an inadvertent disclosure of the Highly Protected Information. The General Protective Order is insufficient as it is general in nature and does not have adequate safeguards to protect Highly Protected 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 PGE's Highly Protected Information. Intermediate measures have not been taken as PGE is making this motion as a proactive step that will facilitate discovery and we anticipate that intermediate measures will not be possible without rendering incomplete the information provided to the Commission, Staff and key parties for their review of PGE's petition. As explained above, it is necessary to limit access to specific Highly Protected Information to protect among other things, PGE's CEII.

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

PGE provided a draft of the Motion and proposed Modified Protective Order to Staff. At the time of filing, Staff indicated that they do not oppose this Motion. As noted above, PGE is the

only party at this time. No other parties have been identified prior to submitting this motion and thus cannot be consulted.

G. Good Cause Justifies Expedited Consideration of this Motion.

PGE's forthcoming filing in April with the OPUC will contain PGE's Responses to the CPCN Standard Data Requests which includes Highly Protected Information and CEII. To ensure that the discovery responses containing Highly Protected Information and CEII can be provided promptly to Staff, PGE respectfully requests that this Motion be considered on an expedited basis.

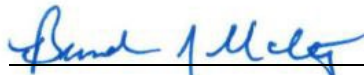
IV. CONCLUSION

For the foregoing 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 Docket PCN 6. The terms of the Modified Protective Order are narrowly tailored and intended to apply only to PGE's most sensitive information. The proposed Modified Protective Order will allow the transmission of such information to the parties that sign the Modified Protective Order. By identifying specific individuals qualified to access Highly Protected Information, the parties to the Modified Protective Order will have certainty regarding the permissible, but limited, disclosure of Highly Protected Information.

DATED this 29th day of March, 2024.

Respectfully submitted,

PORTLAND GENERAL ELECTRIC COMPANY



Brendan J. McCarthy, OSB No. 963556
Assistant General Counsel III
121 SW Salmon Street, 1WTC 1301
Portland, OR 97204
Phone: (503) 464-7371
Email: Brendan.McCarthy@pgn.com

Appendix A

to

Motion for Modified Protective Order

in Docket No. PCN 6

MODIFIED PROTECTIVE ORDER

PCN 6

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 Docket PCN 6.

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 ORS 192.355(8) (exempt from disclosure under Oregon Public Records Law due to federal law or regulation) or 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 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. Until and unless the OPUC Filing Center changes the process, all Highly Protected Information in Docket PCN 6 will be filed with the OPUC Filing Center (puc.filingcenter@state.or.us) 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 (“ALJ”) letter dated March 26, 2020.

5. For a filing containing Highly Protected Information, a Highly Protected version and a public version of the document must be created and filed with the Filing Center. The Highly Protected versions of documents shall be grouped together and should be clearly marked as Highly Protected. The Commission’s Filing Center receives files electronically outside of the Huddle program. For discovery containing Highly Protected Information, the file should be uploaded to a Huddle file folder designated “Highly Protected.”

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 designation and provide written notice to the Commission and other parties.

Challenge to Designation of Highly Protected Information

8. A party may informally challenge any designation of Highly Protected Information by notifying the designating party. If any party objects to such designation by letter or email within five business days, the designating party must provide a written response to the party that describes in detail why the designated information is appropriately designated as Highly Protected Information. The burden resides with the designating party to show that the challenged information is covered by ORCP 36(C)(1) or exempt from disclosure under the Public Records Law. Once notified, the designating party bears the burden of showing that the challenged information is covered by the applicable definition in this Order. Any party may 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 filed with the ALJ must identify the information in dispute and include a certification that reasonable efforts to achieve an informal resolution have been unsuccessful. Within five days of the objection, unless otherwise ordered by the ALJ, the designating party must either remove the highly protected designation or file a written response identifying the factual and legal basis of how the challenged information is protected under the Oregon Public Records Act, ORS 192.311 *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 motion, the Commission will remove the highly protected designation from the challenged information.

10. 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

11. Only persons qualified to receive Highly Protected Information in accordance with Paragraphs 12-14 below (“HC Qualified Persons”) may access Highly Protected Information designated by another party under this Modified Protective Order.

12. Persons automatically bound by this Modified Protective Order and qualified to access Highly Protected Information are:

- (a) Commission employees; and
- (b) Assistant Attorneys General assigned to represent the Commission.

13. Persons qualified to access Highly Protected Information upon signing the Consent to be Bound section of Appendix B are:

- (a) Counsel for a party;
- (b) Any person employed directly by counsel of record; and
- (c) An employee or counsel of the Citizens’ Utility Board of Oregon.

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 HC Qualified Persons.

14. A party bound by the General Protective Order in this docket may seek to qualify persons other than those described in Paragraphs 12 and 13 to access specific Highly Protected Information by having each such person complete and sign Appendix C and submitting the Appendix to the designating party and to the Commission. Within 5 business days of receiving a signed copy of Appendix C, the designating party either must provide access to the requested Highly Protected Information to the person who signed Appendix C or must file an objection under Paragraph 15.

Objection to Access to Highly Protected Information

15. All HC Qualified Persons 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 HC Qualified Person, the designating party must provide the HC Qualified Person and his or her counsel written notice stating the basis for the objection. The parties must promptly confer and attempt to resolve the dispute on an informal basis before requesting review by an ALJ. After receipt of the written notice of objection required by this paragraph, the specific Highly Protected Information may not be disclosed to the HC Qualified Person until the issue is resolved.

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.

Preservation of Confidentiality

17. All HC Qualified Persons must take reasonable precautions to keep Highly Protected Information secure. A HC Qualified Person may reproduce Highly Protected Information to the extent necessary to participate in these proceedings. A HC Qualified Person may discuss Highly Protected Information obtained under this order only with other HC Qualified Persons who have obtained the same information. Disclosure of Highly Protected Information for purposes of business competition is strictly prohibited.

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 such information for any purpose other than participation in this proceeding.

19. A Party wishing to utilize knowledge of Highly Protected Information obtained in this docket for purposes of a subsequent proceeding must submit new data requests for the same information to the utility in the subsequent proceeding, under protective orders applicable to the subsequent proceeding and subject to the discovery rules then applicable for disclosure of Highly Protected Information.

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. The information retained may not be disclosed to any

person. Any other person retaining Highly Protected Information at the conclusion of this proceeding must return it to the designating party within 90 days after final resolution of these proceedings or must destroy the Highly Protected Information and provide an affidavit to the designating party swearing that the Highly Protected Information has been destroyed. 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 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 Highly Protected Information.

APPENDIX B
CONSENT TO BE BOUND
PCN 6

I. Consent to be Bound:

This Modified Protective Order and Appendix B governs the use of Highly Protected Information in these proceedings.

_____ (“Party”) agrees to be bound by the terms of the Modified Protective Order and certifies that it has an interest in this proceeding that is not adequately represented by other parties to the proceedings.

Signature: _____
Printed Name: _____
Date: _____

II. Persons Qualified under Paragraph 13:

I have read the Modified Protective Order and agree to be bound by its terms.

I certify that:

- a. I agree to keep the information in a secure manner as required by the Commission’s rules and destroy it at the conclusion of this proceeding as required by Paragraph 20.
- b. 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.
- c. The party with which I am associated has a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
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APPENDIX B
CONSENT TO BE BOUND
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Job Title: _____

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Employer: _____
Job Title: _____

APPENDIX C

**Signatory Page for Other Persons Seeking Qualification to Access Information Under
Paragraph 14
PCN 6**

Persons Seeking Qualification Pursuant to Paragraph 14.

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

I certify that:

- a. I agree to keep the information in a secure manner as required by the Commission's rules and destroy it at the conclusion of this proceeding as required by Paragraph 20.
- b. 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.
- c. I or the party with which I am associated has a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Associated Party (if applicable): _____
Job Title: _____

If not an employee of a party, describe practice and clients:

MODIFIED PROTECTIVE ORDER

PCN 6

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