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September 15, 2020

Via Electronic Filing

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

Re: UM 1953 – In the Matter of Portland General Electric Company, Investigation into Proposed Green Tariff

Dear Filing Center:

Enclosed for filing in the above-captioned docket is Portland General Electric Company's Motion for a Modified Protective Order, with expedited consideration requested.

Thank you for your assistance.

Sincerely,

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

**MOTION FOR MODIFIED
PROTECTIVE ORDER**
***EXPEDITED CONSIDERATION
REQUESTED***

I. INTRODUCTION

Under 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 Investigation into Proposed Green Tariff proceeding. Specifically, PGE requests the Administrative Law Judge issue the Modified Protective Order attached as Appendix A to this motion. A Modified Protective Order would provide additional protection for highly commercially sensitive, non-public information related to PGE’s power supply agreement.

On July 3, 2018, Administrative Law Judge Sarah Rowe issued General Protective Order No. 18-260 in this proceeding¹.

II. REQUEST FOR ADDITIONAL PROTECTION

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

¹ The Oregon Rules of Civil Procedure concerning trade secrets and confidential information have been updated and renumbered since General Protective Order No. 18-260 was issued, from ORCP (C)(7) to ORCP(C)(1). This motion refers to the updated sections of the ORCP.

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

The following parties have intervened in UM 1953: Alliance of Western Energy Consumers, Avangrid Renewables, Calpine Solutions, Northwest Independent Power Producers Coalition (NIPPC), NW Energy Coalition, Oregon Citizens' Utility Board, Renewable Northwest, Walmart Inc., Sam's West Inc. (Walmart), and PacifiCorp.

B. Legal Basis for the Claim the Information is Protected under ORCP 36(C)(1) (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 party to this proceeding has propounded discovery that seeks to obtain sensitive commercial information related to an agreement between PGE and a power supplier.

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.²

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.³

² See Uniform Trade Secrets Act, ORS 646.461 to 646.475.

³ ORS 192.345(2). See generally, ORS 192.410 to 192.505.

PGE is seeking additional protection for non-public, proprietary and commercially sensitive information that has been requested by a party in this proceeding. The terms and conditions of power purchase agreements reflects concession and advantages that the parties to the agreement protect so as to preserve their negotiating leverage in other power purchase agreement situations. These agreements contain confidentiality clauses for such reasons. PGE's counterparty here has expressed concern about its competitors potentially obtaining a copy of the contract or becoming aware of the terms of the contract. PGE's ability to protect such information will directly benefit customers as it will preserve PGE's ability to effectively negotiate other power purchase agreements. The disclosure of the terms and conditions of the agreement would have an immediate and adverse effect on the counterparty's and PGE's ability to successfully negotiate power purchase agreements in the future with other parties.

Disclosure could also impact the competitiveness of future procurement efforts by PGE as it would chill the willingness of power producers to put their competitive 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 the terms and conditions of the power purchase agreement as highly confidential information and minimize the risk to the counterparty, and minimize the risk of disadvantaging the company in future 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 proposed Modified Protective Order 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 Commission 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 a counterparty and PGE. 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 disclosure of Highly Protected 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. 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. 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 potential market competitors will not have access to the Highly Confidential Information.

It is essential to prevent the Highly Confidential Information from being provided to any persons who participate in wholesale power markets. The nature of the Highly Confidential Information that has been requested 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.

PGE asks that the Highly Confidential Information be made available initially only to Commission Staff and its counsel, to employees and counsel for the CUB and counsel of other parties in this docket. Any other 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. In addition, PGE asks to redact certain provisions in the requested agreement, including the pricing, delay damages, performance assurance and production guarantee information.

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. Description of the Intermediate Measures Explored by the Parties (OAR 860-001-0080(3)(a)(E)).

Until recently, PGE had not expected to provide Highly Confidential information in this docket. The need to provide Highly Confidential information arose from Data Requests served on PGE by a party in this proceeding. PGE has conferred with that party and has notified the other parties of this filing. The requesting party has stated it will support a motion for a modified protective order. AWEC takes no position on the motion. Calpine, Walmart, PacifiCorp, and CUB have no objection to the motion. Avangrid supports the motion. PGE has not heard from the remaining parties regarding the motion.

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

As mentioned in Section E, PGE has conferred with the party who propounded the data request, and notified the other parties. PGE has received confirmation of no opposition from the majority of the other parties.

III. CONCLUSION

For the reasons articulated above, 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 UM 1953, to allow PGE to provide highly commercially sensitive confidential information that has been requested in this docket.

DATED this 15th day of September, 2020.

Respectfully submitted,



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ORDER NO.

Attachment A

PROPOSED MODIFIED PROTECTIVE ORDER

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1953

In the Matter of
PORTLAND GENERAL ELECTRIC COMPANY,
Investigation into Proposed Green Tariff.

**MODIFIED PROTECTIVE
ORDER**

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On September 15, 2020, Portland General Electric Company (“PGE”) filed a motion for a modified protective order in this proceeding to provide additional protections beyond that afforded by the general protective order.¹ For good cause shown, I adopt PGE’s requested modified protective order, as explained below.

PGE’s motion includes the elements required by OAR 860-001-0080(3)(a)(A)-(E). PGE states that a party has submitted a data request in this docket that requires information about PGE’s power supply agreement. PGE states that this information is commercially sensitive. PGE intends to provide highly confidential, commercially sensitive information in response to the party’s data request.

PGE’s requested modified protective order identifies procedures for different persons to access highly protected information. Commission employees and counsel for Commission Staff are automatically eligible. Counsel for a party and the regulatory staff of the Oregon Citizens’ Utility Board are eligible upon signing and submitting Appendix B. A party may seek to qualify other persons by having those persons complete Appendix C and submitting the signatory pages. PGE states these procedures will limit the risk of an inadvertent breach of confidentiality. The modified protective order also requires that highly protected information be labeled as such, and printed on green paper, or placed in a highly protected folder in Huddle or handled in accordance with the Commission Order No. 20-088 (outlining temporary measures for handling confidential information during COVID-19).

The revised rules adopted in AR 628², state that the Administrative Law Judge (ALJ) will provide expedited review of any motion for a modified protective order and may issue the modified protective order within 3 business days to facilitate filing of protected information and discovery³. A party in this proceeding may still file a response to PGE’s motion within 15 days of the motion-filed date (by September 30, 2020)⁴. If a response is filed, the ALJ will conduct a *de novo* review as described in OAR 860-001-0080(3)(e).

¹ Order No. 18-260 (July 3, 2018)

² *In the Matter of Rulemaking to Amend OAR 860-001-0080, Protective Orders*, Docket No. AR 628 , Order No. 20-013 (January 14, 2020)

³ OAR 860-001-0080(3)(c)

⁴ OAR 860-001-0080(3)(d)

ORDER NO.

ORDER

IT IS ORDERED that the Modified Protective Order, attached as Appendix A, is adopted.

[Judge]
Administrative Law Judge

MODIFIED PROTECTIVE ORDER
UM 1953

Scope of this Order:

1. This order supplements General Protective Order No. 18-260 and governs the acquisition and use of “Highly Confidential Information” produced or used by any party to docket UM 1953.

Designation of Protected Information and “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);
 - (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. 20-

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. Each page of a document containing Highly Protected Information filed with the Commission and served on persons qualified to access Highly Protected 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 PROTECTED INFORMATION.
THE INFORMATION MAY BE SHOWN ONLY TO
PERSONS QUALIFIED TO ACCESS HIGHLY PROTECTED
INFORMATION AS DEFINED IN THE ORDER.

5. 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.

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 Protected Information must make reasonable efforts to ensure 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 protected designation and provide written notice to the Commission and other parties.

Challenge to Designation of Information as Highly Protected:

8. 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 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 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 Protected Information:

12. Persons automatically bound and qualified to access Highly Protected Information are:

- a. Commission employees; and
 - b. Assistant Attorneys General assigned to represent the Commission.
13. The following persons are qualified to access Highly Protected Information upon completing Appendix B:
- a. Counsel for the party; and
 - b. An employee of the Regulatory Division at the Oregon Citizens' Utility Board.
14. A party bound by the General Protective Order No. 18-260 may seek to qualify other persons to access certain specific Highly Protected Information by having those persons complete and sign Appendix C, and submitting that information to the designated party and the Commission. Within five business days of receiving a copy of Appendix C, the designated party must either provide access to the requested information designated as Highly Protected Information or file an objection under paragraph 15.

Objection to Access to Protected Information:

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 14, 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.
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 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.
18. Without the written permission of the designating party, any person given access to Highly Protected Information under this order may not 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 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

CONSENT TO BE BOUND AND SIGNATORY PAGE
UM 1953

I. Consent to be Bound:

_____ [PARTY] agrees to be bound by the terms of this Modified Protective Order.

Signature: _____

Printed Name: _____

Date: _____

II. 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 certify that:

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.

The party I am associated with has a legitimate and non-competitive need for the Highly Confidential Information for this proceeding and not simply a general interest in the information

By: Signature: _____ Date: _____

Printed Name: _____

Address: _____

Employer: _____

Job Title: _____

By: Signature: _____ Date: _____

Printed Name: _____

Address: _____

Employer: _____

Job Title: _____

APPENDIX C
QUALIFICATION OF OTHER PERSONS
 UM 1953

III. Persons Seeking Qualification under Paragraph 14:

I have read the modified protective order, agree to be bound by the terms of the order, and provide the following information to seek access to certain specific information designated as Highly Confidential Information.

Signature:		Date:
Printed Name:		
Physical Address:		
Email Address:		
Employer:		
Associated Party:		
Job Title:		
If not employee of party, description of practice and clients:		
I seek access to the following information designated as Highly Protected Information for the following reasons:		