

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 257

In the Matter of  
  
IDAHO POWER COMPANY  
  
2013 Annual Power Cost Update.

MODIFIED  
PROTECTIVE ORDER

DISPOSITION:      MOTION FOR MODIFIED PROTECTIVE ORDER  
GRANTED

On November 19, 2012, General Protective Order No. 12-440 was issued in this docket governing the use of confidential information in this proceeding relating to Idaho Power's 2013 annual power cost update. On April 8, 2013, Idaho Power Company filed a motion for modified protective order with the Commission, to include highly confidential information. Idaho Power states that the order is needed to protect the highly confidential information, including, but not limited to, minutes from the company's Risk Management Committee meetings, associated documents, including sensitive market positions, hedge transactions, detailed operating and dispatch plans for the company's generating plants and other information, the public release of which would pose significant risk of competitive harm to the company. Idaho Power states that Commission Staff and the Citizens' Utility Board of Oregon support this modified protective order. Idaho Power adds that the order will facilitate the discovery and settlement process in this docket.

I find that good cause exists to issue a modified protective order, which is attached as Appendix A. The order permits the broadest possible discovery consistent with the need to protect confidential and highly confidential information. It shields no specific documents and makes no judgment about whether any particular document contains a trade secret or commercially sensitive information. Rather, the order adopts a process for resolving discovery disputes that include sensitive information.

The order permits any party to designate information as confidential or highly confidential if the party reasonably believes that the information falls within the scope of ORCP 36(C)(7). The designation must be made in good faith and be limited to only those portions of the document that qualify as a protected trade secret or other confidential research, development, or commercial information. Any other party may challenge the designation of the information as confidential or highly confidential. The designating party bears the burden of showing that the challenged information is covered by ORCP 36(C)(7).

Confidential information or highly confidential information may be disclosed only to a "qualified person" as defined in the general protective order. The authors of the confidential or highly confidential material, the Commission, Administrative Law Judges, Commission Staff, and counsel of record for a party or persons directly employed by counsel are "qualified persons" and may review confidential information without individually signing the general protective order. Other persons wanting access to confidential information must become qualified as specified in the modified protective order.

To receive confidential information, all parties except Commission Staff must sign the "consent to be bound" in section I of Appendix B. To receive highly confidential information, all parties except Commission Staff must sign the "consent to be bound" in section I of Appendix C. This includes the party that moved for issuance of the general protective order because any party may designate information as confidential under the order. By signing the "consent to be bound," a party agrees to be bound by the terms of the general protective order and certifies that it has an interest in the proceedings that is not adequately represented by other parties to the proceedings.

Any person given access to confidential information must ensure compliance with the general protective order and must take reasonable precautions to keep confidential and highly confidential information secure. Without the written permission of the designating party, no person may use or disclose the information for any purpose other than participating in these proceedings. Questions regarding whether a particular person is a "qualified person" under the general protective order may be directed to the Administrative Hearings Division at (503) 378-6678.

**ORDER**

IT IS ORDERED that the Modified Protective Order, attached as Appendix A, governs the disclosure of confidential information and highly confidential information in these proceedings and supersedes Order No. 12-440.

Made, entered, and effective on APR 08 2013



*Patrick Power*  
\_\_\_\_\_  
Patrick Power  
Administrative Law Judge

A party may appeal this order to the Commission under OAR 860-001-0420.

**MODIFIED PROTECTIVE ORDER  
DOCKET NO. UE 257**

**Scope of this Order**

1. This order governs the acquisition and use of "Confidential Information" and "Highly Confidential Information" in Docket UE 257.

**Definitions**

2. "Confidential Information" is information that falls within the scope of ORCP 36(C)(7) ("a trade secret or other confidential research, development, or commercial information").

3. "Highly Confidential Information" is commercially sensitive information including but not limited to minutes from the meetings of Idaho Power's Risk Management Committee and supporting documents referenced therein. These minutes and associated documents include Idaho Power's highly sensitive market positions, hedge transactions, detailed operating and dispatch plans for the Company generating plants, and other highly sensitive and confidential material the disclosure of which poses a highly significant risk of competitive harm to Idaho Power Company.

4. With respect to Confidential Information, a "qualified person" is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. A Commissioner or Commission staff;
- c. An employee of the Citizens' Utility Board of Oregon;
- d. Counsel of record for a party;
- e. A person employed directly by counsel of record; or
- f. A person qualified pursuant to paragraph 14. This includes all other parties and their employees.

5. With respect to Highly Confidential Information, a "qualified person" is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. A Commissioner or Commission staff;
- c. An employee of, or counsel for, the Citizens' Utility Board of Oregon;
- d. A person qualified pursuant to paragraph 12. This includes all other parties, their employees, counsel of record for a party, and a person employed directly by counsel of record.

**Designation of Confidential or Highly Confidential Information**

6. A party providing Confidential Information shall inform other parties that the material has been designated confidential by placing the following legend on the information:

CONFIDENTIAL  
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party shall designate as confidential only those portions of the document that fall within ORCP 36(C)(7).

A party providing Highly Confidential Information shall inform other parties that the material has been designated Highly Confidential by placing the following legend on the information:

HIGHLY CONFIDENTIAL  
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party shall designate as highly confidential as few documents as necessary to protect the party's interests in its Highly Confidential Information.

7. A party may designate as confidential or highly confidential any information previously provided by giving written notice to the other parties. Parties in possession of newly designated Confidential Information or Highly Confidential Information shall, when feasible, ensure that all copies of the information bear the above legend to the extent requested by the party desiring confidentiality.

**Information Given to the Commission**

8. Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on YELLOW paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO.  
AND CONTAINS CONFIDENTIAL INFORMATION. THE  
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED  
PERSONS AS DEFINED IN THE ORDER.

9. Highly Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on GREEN paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO.  
AND CONTAINS HIGHLY CONFIDENTIAL INFORMATION. THE  
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED  
PERSONS AS DEFINED IN THE ORDER.

10. The Commission's Administrative Hearings Division shall store the Confidential Information and Highly Confidential Information in a locked cabinet dedicated to the storage of Confidential Information and Highly Confidential Information.

**Disclosure of Confidential Information or Highly Confidential Information**

11. Confidential Information. Parties desiring receipt of Confidential Information shall sign the Consent to be Bound Form attached as Appendix A. This requirement does not apply to the Commission staff. Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 4. Confidential Information shall be delivered to qualified persons who are on the service list. If the Confidential Information is voluminous it may, in the alternative, be made available to qualified persons at a place and time agreeable to the parties or as directed by the Administrative Law Judge.

12. Highly Confidential Information. Parties desiring receipt of Highly Confidential Information shall file a motion with the Commission requesting access to Highly Confidential Information. The party filing such a motion must show that (a) the party has a legitimate and non-competitive need for the Highly Confidential Information (i.e. customers may suffer potential harm if the party does not receive access to the Highly Confidential Information) and not simply a general interest in the information and (b) the legitimate need identified by the party outweighs the potential for competitive harm to Idaho Power Company resulting from disclosure of the Highly Confidential Information. If the Commission grants such a motion, the party shall sign the Consent to be Bound Form attached as Appendix B certifying that:

- a. the person requesting access for the party to Highly Confidential Information is not now involved, and will not for a period of two years involve themselves in, decision-making with respect to which the Highly Confidential Information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with Idaho Power Company;
- b. the person requesting access to Highly Confidential Information does not, and will not for a period of two years provide to any decision makers described in paragraph 12(a) information with respect to which the Highly Confidential Information may be relevant;
- c. the person requesting access to Highly Confidential Information understands 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 requirements in this paragraph 12 do not apply to the Commission staff or to employees, outside experts, and counsel of the Citizens' Utility Board of Oregon, except that employees, outside experts, and counsel of the Citizens' Utility Board of Oregon must sign the Consent to be Bound Form attached as Appendix B. Highly Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 5. When feasible, Highly Confidential Information shall be delivered to qualified persons who are on the service list. In the alternative, Highly Confidential Information may be made available for inspection and review by qualified persons in a place and time agreeable to the parties or as directed by the Administrative Law Judge.

13. Qualified persons may disclose Confidential Information to any other qualified person, unless the party desiring confidentiality protests as provided in paragraph 15. Qualified persons may disclose Highly Confidential Information to any other person qualified to receive Highly Confidential Information, unless the party desiring confidentiality protests as provided in paragraph 15.

14. To become a qualified person under paragraph 4(c) or (f) or 5, a person must:

- a. Read a copy of this Modified Protective Order;
- b. Execute the Consent to be Bound Form relevant to Confidential Information or Highly Confidential Information, as applicable;
- c. Date the statement;
- d. Provide a name, address, employer, and job title; and
- e. If the person is a consultant or advisor for a party, provide a description of the nature of the person's consulting or advising practice, including the identity of his/her current, past, and expected clients.

Counsel shall deliver a copy of the signed statement including the information in (d) and (e) above to the party desiring confidentiality and to all parties of record. Such notification may be made via e-mail or facsimile. A person qualified under paragraph 4(f) shall not have access to Confidential Information and a person qualified under paragraph 5 shall not have access to Highly Confidential Information sooner than five (5) business days after receipt of a copy of the signed statement including the information in (d) and (e) above by the party desiring confidentiality.

15. All qualified persons shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The qualified persons who have signed the Consent to be Bound relevant to Highly Confidential Information shall have access to Highly Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The party desiring to restrict the qualified person(s) from accessing specific Confidential Information or Highly Confidential Information must provide written notice to the qualified person(s) and counsel for the party associated with the qualified person(s) as soon as the party becomes aware of reasons to restrict access. The parties must promptly confer and attempt to resolve any dispute over access to Confidential Information or Highly Confidential Information on an informal basis before filing a motion with the Administrative Law Judge. If the dispute cannot be resolved informally, either party may

file a motion with the Administrative Law Judge for resolution. Either party may also file a motion if the other party does not respond within five days to a request to resolve the dispute. A motion must describe in detail the intermediate measures, including selected redaction, explored by the parties and explain why such measures do not resolve the dispute. After receipt of the written notice as required in this paragraph, the specific Confidential Information or Highly Confidential Information shall not be disclosed to the qualified person(s) until the issue is resolved.

### **Preservation of Confidentiality**

16. All persons who are given access to Confidential Information or Highly Confidential Information by reason of this order shall not use or disclose the Confidential information or Highly confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the Confidential Information or Highly confidential Information secure. Disclosure of Confidential Information or Highly Confidential Information for purposes of business competition is strictly prohibited.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce Confidential Information or Highly Confidential Information to the extent necessary for the preparation and conduct of this proceeding. Qualified persons may disclose Confidential Information to other qualified persons. Qualified persons may disclose Highly Confidential Information to other persons qualified to receive highly confidential information in this proceeding.

### **Duration of Protection**

17. The Commission shall preserve the confidentiality of Confidential Information or Highly Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of Confidential Information or Highly Confidential Information.

### **Destruction after Proceeding**

18. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Confidential Information or Highly Confidential Information to the extent reasonably necessary to maintain a file of this proceeding 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 Confidential Information or Highly Confidential Information or documents containing such Confidential Information or Highly Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Confidential Information or Highly Confidential Information or documents containing such Confidential Information or Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

If the Commission adopts a different retention policy addressing the destruction of Confidential or Highly Confidential Information in Docket AR 553, the retention policy adopted in that docket shall supersede the terms of paragraph 18 and apply to all Confidential and Highly Confidential Information provided to any party in this docket.

### **Appeal to the Presiding Officer**

19. If a party disagrees with the designation of information as confidential or highly confidential, the party shall contact the designating party and attempt to resolve the dispute on an informal basis. If the parties are unable to resolve the dispute, the party desiring to use the information may move for exclusion of the information from the protection conferred by this order. The motion shall:

- a. Specifically identify the contested information; and
- b. Assert that the information does not fall within ORCP 36(C)(7) and state the reasons therefore.

The party resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the party resisting disclosure does not respond to the motion within ten (10) calendar days, the challenged information shall be removed from the protection of this order.

### **Additional Protection**

20. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested;
- d. The specific reasons the requested relief is necessary; and
- e. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if released, shall not be disclosed pending the Commission's ruling on the motion.





**I. Persons Qualified pursuant to Paragraph (4)(c) and (f) and Paragraph 14: Confidential Information**

I have read the Modified Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 14.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

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APPENDIX C  
HIGHLY CONFIDENTIAL INFORMATION

**I. Consent to be Bound**

This Modified Protective Order governs the use of "Confidential Information" and "Highly Confidential Information" in this proceeding.

\_\_\_\_\_ (Party) agrees to be bound by its terms of this Modified Protective Order.

Signature: \_\_\_\_\_

Printed: \_\_\_\_\_

Date: \_\_\_\_\_

**II. Persons Qualified pursuant to Paragraph 5 and Paragraph 14: Highly Confidential Information**

I have read the Modified Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 14.

I certify that:

(1) I am not now involved, and will not for a period of two years involve myself in, decision-making with respect to which the Highly Confidential Information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the Idaho Power Company;

(2) I do not, and will not for a period of two years provide to any decision makers described in paragraph 12(a) information with respect to which the Highly Confidential Information may be relevant;

(3) 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.

**II. Persons Qualified under Paragraph 3(e):**

I have read the general protective order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 10.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Employer: \_\_\_\_\_  
 Job Title: \_\_\_\_\_  
 Paragraph 10(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Employer: \_\_\_\_\_  
 Job Title: \_\_\_\_\_  
 Paragraph 10(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Employer: \_\_\_\_\_  
 Job Title: \_\_\_\_\_  
 Paragraph 10(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Employer: \_\_\_\_\_  
 Job Title: \_\_\_\_\_  
 Paragraph 10(e) information also provided.