

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1892

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,Application for Waiver of the
Competitive Bidding Guidelines.MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On September 1, 2017, Portland General Electric Company filed a motion asking the Commission to enter a Modified Protective Order to govern the acquisition and use of certain information. The modified protective order would supplement the General Protective Order, adopted by the Commission in Order No. 17-320, that protects confidential information filed with PGE's Application for Waiver of the Competitive Bidding Guidelines. PGE requests a Modified Protective Order to specifically protect two types of documents likely to be reviewed by Staff: 1) term sheets containing counterparty offers; and 2) PGE's workpapers supporting the scoring of counterparty offers. PGE states that these documents constitute Highly Confidential Information that is extremely sensitive and cannot be adequately protected under the General Protective Order. PGE asserts that disclosure of such information could damage and distort PGE's bilateral negotiation process and hinder the company's efforts to acquire the most cost-effective capacity for customers now and in the future.

The requested Modified Protective Order would allow the company to initially provide the designated Highly Confidential Information only to Commission Staff and the Oregon Citizens Utility Board (CUB), PGE indicates. To the extent other parties seek access to the same information, the Modified Protective Order would allow PGE and a requesting party to enter into discussions on a case-by-case basis with assistance from the Commission if needed. PGE represents that it conferred with Staff and intervenors, including CUB, the Industrial Customers of Northwest Utilities, and the Northwest and Intermountain Power Producers Coalition, and all indicate that they do not oppose the motion. No objection was filed to the motion.

I find that good cause exists to issue a Modified Protective Order, which is attached as Appendix A. A party may appeal this order to the Commission under OAR 860-001-0110.

ORDER

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

Made, entered, and effective on SEP 13 2017.



Traci Kirkpatrick (ljk)

Traci A. G. Kirkpatrick
Administrative Law Judge

MODIFIED PROTECTIVE ORDER
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Scope of this Order:

1. This order governs the acquisition and use of “Highly Confidential Information” produced or used by any party to these proceedings.

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)(7) (a trade secret or other confidential research, development, or commercial information);
 - (b) Is not publicly available; and
 - (c) Is extremely competitively sensitive information that cannot be disclosed to current or future participants in wholesale power markets—even under the Commission’s normal safeguards for Protected Information—without jeopardizing current or future resource acquisition efforts.
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

The party should make reasonable efforts to designate as Highly Confidential Information only the portions of the information covered by the above definitions.

4. Each page of a document containing Highly Confidential Information filed with the Commission or provided to Qualified Persons under this order must be printed on green paper and placed in a sealed envelope or other appropriate container. *Only the portions of a document that fall within the above definitions 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 QUALIFIED
PERSONS AS DEFINED IN THE ORDER ELIGIBLE TO RECEIVE
HIGHLY CONFIDENTIAL INFORMATION.

5. 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 to ensure that all copies of the material containing the information bear the above legend if requested by the designating party.

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)(7), 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 Information as Highly Confidential:

6. 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 the applicable definition in this Order. Any party may request that the ALJ hold a conference to help resolve disputes about proper designation.

7. 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.

8. Within five business days of service of the objection, the designating party must either remove the Highly Confidential 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 designation from the challenged information.

9. 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 Confidential Information:

10. Only Qualified Persons may access Highly Confidential Information designated by another party under this Modified Protective Order. Persons automatically bound by this protective order and qualified to access Highly Confidential are:

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

11. 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 PGE, and subject to any additional restrictions mutually agreed-

upon. Any dispute that arises under this section will be resolved under paragraph 13.

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:

12. All persons qualified to access Highly Confidential Information shall have access to such 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, the designating party must provide the Qualified 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.

13. 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 Confidential Information may not be disclosed to the person subject to the objection.

Use of Highly Confidential Information:

14. All Qualified Persons must take reasonable precautions to keep Highly Confidential Information secure. A Qualified Person 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 persons qualified to receive the same information.

15. Without the written permission of the designating party, any Qualified Person given access to Highly Confidential Information under this order may not use or disclose Highly Confidential Information for any purpose other than participating in these proceedings. A party who receives Highly Confidential Information under this order may not disclose it to any other party, even a party who is qualified under this order.

16. 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.

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. The information retained may only be disclosed to Qualified Persons under this 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:

17. The Commission will preserve the designation of information as protected 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 Confidential Information.

**APPENDIX B: QUALIFICATION OF PERSONS TO RECEIVE
HIGHLY CONFIDENTIAL INFORMATION
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I. Persons Seeking Qualification to receive Highly Confidential Information under Paragraph 14:

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

Signature:		Date:
Printed Name:		
Physical Address:		
Email Address:		
Employer:		
Associated Party:		
Job Title:		
If not employee of party, description of practice and clients:		