

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2176

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Application for Waiver of the
Competitive Bidding Rules.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On June 29, 2021, Portland General Electric Company, filed a motion for a modified protective order to provide additional protections for highly confidential, commercially sensitive information, including commercial terms and conditions establishing counterparty compensation, methods used to identify proposed cost-competitive pricing, and PGE's confidential business plans. PGE explains that public disclosure of this information would provide an unfair advantage to PGE's direct and indirect competitors, harm the current ongoing negotiations regarding this agreement, and put PGE at a commercial disadvantage in pursuing and negotiating future procurement efforts.

The modified protective order requested by PGE allows for commercially sensitive information relating to an ongoing bilateral procurement effort to be designated as highly confidential information. Access to highly protected information is restricted to Commission employees (including assigned DOJ attorneys), as well as employees or counsel of the Oregon Citizens' Utility Board and counsel for other parties to the docket who sign the consent to be bound section of Appendix B. The modified protective order also establishes a process for additional parties to seek access to highly confidential information on a case-by-case basis.

While PGE appropriately requested electronic handling of confidential information following the Commission's COVID rules, I modified the language so it does not revert to the old paper process after COVID. The Administrative Hearings Division (AHD) has recently begun to delete MPO references to green paper and sealed envelopes as the Filing Center does not anticipate returning to our old paper process.

PGE represents that no parties have intervened in this proceeding. PGE states that the company has conferred with Staff regarding the issuance of this modified protective order and that Staff does not object to this motion.

I find that good cause exists to issue the modified protective order, which is attached as Appendix A. The modified protective order will function alongside the existing general protective order No. 21-183.

ORDER

IT IS ORDERED that the general protective order, attached as Appendix A, is adopted.

Made, entered, and effective on Jul 7, 2021.



on behalf of

Sarah Rowe
Administrative Law Judge



Attachment A: Proposed Modified Protective Order

MODIFIED PROTECTIVE ORDER
UM 2176

Scope of this Order:

1. This order supplements General Protective Order No. 21-183 and governs the acquisition and use of “Highly Confidential Information” produced or used by any party to docket UM 2176.

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. 21-____

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. Until and unless the OPUC Filing Center changes the process, all Highly Confidential Information in OPUC Docket UM 2176 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 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 Confidential. 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 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 that 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 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. Counsel for the party.

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.

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 Confidential Information by having each such person complete and sign Appendix B and submitting the Appendix to the designating party and to the Commission. Within 10 business days of receiving a signed copy of Appendix B, the designating party either must provide access to the requested Highly Confidential Information to the person who signed Appendix B or must file an objection under Paragraph 15.

Objection to Access to Highly Confidential Information:

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

Use of Highly Confidential Information:

17. 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.
18. 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.
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 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:

21. The Commission will preserve the designation of information as Highly Confidential Information or Highly Confidential 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 Confidential Information or Highly Confidential Information.

**APPENDIX B: QUALIFICATION OF PERSONS TO RECEIVE
HIGHLY CONFIDENTIAL INFORMATION
DOCKET NO. UM 2176**

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 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 PGE and I am qualified to receive Highly Confidential Information; **or**
- (c) I am not an employee of the Citizens Utility Board of Oregon and PGE has not objected to allowing my qualification to receive Highly Confidential Information, or the ALJ has issued a ruling granting my access 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:
