

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2166

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,2021 All-Source Request for  
Proposals.MODIFIED  
PROTECTIVE  
ORDER

**DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED**

On January 27, 2022, Portland General Electric Company filed a motion for a modified protective order (MPO) requesting expedited consideration. PGE seeks additional protections for highly commercially sensitive, non-public information in PGE's 2021 All-Source Request for Proposals (RFP).

PGE states it has received bids in its RFP and is conducting on-going bid analysis, modeling, evaluation, and scoring. PGE explains it has agreements with bidders to maintain the confidentiality of their information. PGE states that disclosure of the information could hinder PGE's efforts to acquire the most cost-effective resources for its customers.

PGE's draft MPO describes highly confidential information as any information a party reasonable determines falls within the scope of ORCP 36(C)(1) (trade secret), is not publicly available, and is not adequately protected by general protective Order No. 21-161 in this docket. In describing what individuals are qualified to access highly confidential information, PGE's draft MPO contains notable restrictions. The draft MPO provides that Commission employees and Assistant Attorneys General assigned to represent the Commission are automatically qualified persons. Employees of the Oregon Citizens' Utility Board (CUB) may become qualified by signing Appendix B. Other party representatives are to come to an agreement with PGE on a case-by-case basis to receive the highly confidential information, and then may sign Appendix B. If a party cannot reach agreement with PGE, then PGE and the party are to file an objection and response with the Commission. If the Administrative Law Judge issues a ruling allowing the party representative to be a qualified person, then the person may sign Appendix B.

PGE states it is necessary to limit access to bid information and bid analysis because viewing such information would inevitably influence the actions of market participants. PGE believes the nature of the highly confidential information is such that individuals would not be able to forget the information once it is disclosed in this docket. For example, if a person reviews the highly confidential information in this docket and later participates in the market, the highly confidential information would influence their actions, despite the prohibition on its use. PGE concludes that no precautions other than limiting access can prevent this outcome.

The draft MPO contains special handling procedures for highly protected information. At this time, highly confidential information will be filed with a password protected and encrypted electronic ZIP file. If a paper process returns in the future, highly confidential information will be printed on green paper, placed in a sealed envelope and labeled as highly confidential. If placed in Huddle, the information will be marked as highly confidential and uploaded to a folder labeled as highly confidential.

I find that good cause exists to issue the modified protective order, which is attached as Appendix A. PGE states that, the same day it filed its motion for a MPO, it gave notice to parties in the docket of its intention to seek a MPO. If any party would like to file a response to PGE's motion, it may be filed by February 11, 2022, and the ALJ will conduct a *de novo* review of the terms of the MPO, per OAR 860-001-0080(3)(c)-(e).

Made, entered, and effective on Feb 1, 2022.



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Sarah Rowe  
Administrative Law Judge



**MODIFIED PROTECTIVE ORDER**  
UM 2166

**Scope of this Order:**

1. This order supplements General Protective Order No. 21-161 and governs the acquisition and use of “Highly Confidential Information” produced or used by any party to docket UM 2166.

**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. 22-\_\_\_\_

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. For a temporary period, all Highly Confidential Information in OPUC Docket UM 2166 will be filed with the OPUC Filing Center ([puc.filingcenter@puc.oregon.gov](mailto:puc.filingcenter@puc.oregon.gov)) 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.

When the temporary waiver of rules referenced in Order No 20-088 is rescinded, the Highly Confidential Information will be processed as follows:

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

5. Highly Confidential Information disclosed by a designated party to a person qualified to access Highly Confidential Information through informal discovery or by means of Commission's Huddle website will be marked "Highly Confidential Information" and uploaded to a file folder designated "highly confidential" 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 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 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 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. 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 15.

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:**

14. 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 Paragraph 13, 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.
15. 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:**

16. 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.
17. 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.
18. 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.
19. 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:**

20. 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 2166**

**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 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.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

Physical Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Employer: \_\_\_\_\_

Associated Party: \_\_\_\_\_

Job Title: \_\_\_\_\_

If not employee of party, description of practice and clients:

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