

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2164

ZENA SOLAR, LLC.

Complainant,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

ORDER

**DISPOSITION: RULING MODIFIED IN PART**

Zena Solar, LLC (Zena) requested certification and Commission consideration of the April 14, 2022 ALJ Ruling determining that certain evidence submitted in this case should remain protected. The ALJ certified the request for good cause. We revise the ALJ's decision with respect to one item listed in Zena's certification request as discussed below.

**I. BACKGROUND AND INTRODUCTION**

The ALJ assigned to this proceeding issued a ruling on April 14, 2022, which overruled Zena's objection to certain information labeled as confidential by PGE. The ALJ ruling distinguished individual requests for information by an interconnection customer seeking to understand costs and utility requirements, as opposed to a broad distribution of detailed system information.<sup>1</sup> The ALJ noted in the ruling that, while there is a public benefit to ensuring that information is broadly available, there is also a risk that certain information could be used by a bad actor to conduct a cyber-attack on portions of PGE's electric distribution grid.<sup>2</sup>

On April 22, 2022, Zena filed a request for certification of certain items which were the subject of the ALJ ruling. The request focused on specific information that Zena characterized as already in the public domain, items already generally known in the public domain, or information which could be inferred from other filings and proceedings. Zena identified three items in its request that should not be designated as confidential: certain designations in the Wallace one-line diagram (Zena Solar/123); items within PGE witness Gross' modeling results (PGE/204-205); and information

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<sup>1</sup> ALJ Ruling at 6 (Apr 14, 2022).

<sup>2</sup> *Id.* at 6-7.

contained in a Schweitzer Engineering Laboratories (SEL) website printout (Zena Solar/105 and PGE/105).

The ALJ certified the ruling for our review, finding good cause. Upon review of the request, we agree with Zena that one of the items listed by Zena is currently publicly available and therefore should not be designated as confidential. Therefore, we modify the ALJ's ruling in part, as discussed below. The other two items will maintain their protected status.

## II. APPLICABLE LAW

### A. Request for Certification

A party may request certification of an ALJ's written or oral ruling for the Commission's consideration. If a party requests certification, then the ALJ must certify the ruling to the Commission if: (a) The ruling may result in substantial detriment to the public interest or undue prejudice to a party; (b) The ruling denies or terminates a person's participation; or (c) Good cause exists for certification.<sup>3</sup>

Zena notes that final Commission orders must provide: 1) specific "findings of fact" that are "supported by substantial evidence;" and 2) "conclusions of law," which together demonstrate that "the reasoning is rational" and lawful. In its request, Zena states that the three items at issue are either publicly available, may be inferred from other publicly available information, or do not pose a legitimate security threat. Therefore, Zena concludes that these items should not be designated as protected.<sup>4</sup>

### B. Commission Test for Protected Information

The Commission's general protective order, applicable in this case, sets forth a two-part test for whether information may be designated as Protected Information. Any information must be reasonably determined by the designating party to "[f]all within the scope of ORCP 36(C)(1) (a trade secret or other confidential research, development, or commercial information);" and the information "(b) is not publicly available."<sup>5</sup> Any other party may object to such a designation. An objection "need only identify the information in dispute and certify that reasonable efforts to achieve informal resolution have failed."<sup>6</sup> After a party objects, the designating party must "either remove the protected designation or \* \* \* identify the factual and legal basis of how the challenged information is protected under the Oregon Public Records Act, ORS 192.311 *et seq.*, or the Uniform Trade Secrets Act, ORS 646.461(4)."<sup>7</sup> This requires more than "[b]road allegations unsubstantiated by specific facts."<sup>8</sup> The Commission "encourage[s] parties to

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<sup>3</sup> OAR 860-001-0110.

<sup>4</sup> Zena Solar Request for Certification at 2 (Apr 22, 2022).

<sup>5</sup> Order No. 21-111, Appendix A at 1 (Apr 16, 2021).

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

challenge the confidential designation of any publicly available information to help ensure that designations are limited and made in good faith.”

If information is not publicly available, it may be protected as “a trade secret or other confidential research, development, or commercial information” under the Oregon Public Records Act or the Uniform Trade Secrets Act. The Oregon Public Records Act provides a long list of exemptions to public disclosure, many specific to agencies other than the Commission.

The Uniform Trade Secrets Act defines a trade secret as information that “[d]erives independent economic value, actual or potential, from not being generally known to the public,” and “[i]s the subject of efforts ... to maintain its secrecy.” The Oregon Court of Appeals provided a three-part test using a fact-specific inquiry focusing on the facts and circumstances presented to determine what constitutes trade secret information, explaining that it: 1) derives economic value from not being generally known; 2) is subject to reasonable efforts to maintain its secrecy; and 3) disclosure would cause a significant harm.<sup>9</sup>

In our review of the three items below, we first look to see if the information is publicly available. If it is not, we determine, using the three factors from the appeals court, whether or not the information is a trade secret, worthy of maintaining its designation as protected.

### III. DISCUSSION

#### A. Wallace One-Line Diagram

The Wallace One-Line Diagram (Wallace Diagram) is a technical document containing information about primary system and switching equipment.<sup>10</sup> Specifically, the document is a diagram of the Wallace substation, the designated point of interconnection for the Zena facility. Wallace substation upgrades were an issue in these proceedings, with regard to which party would potentially shoulder additional costs for protection of the substation.<sup>11</sup>

In its request, Zena refers the Commission to its previous arguments in its March 1, 2022 objection. In that document, Zena argues that all of PGE’s confidential designations of this diagram should be removed, with the exception of certain text and part numbers following the headers.<sup>12</sup> In addition to claiming that these documents are available as a part of several published interconnection studies, Zena quotes PGE’s internal guidance instructions for system impact studies, which appear to only require partial redaction of these types of diagrams.<sup>13</sup>

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<sup>9</sup> *Pfizer v. Oregon Department of Justice*, 254 Or App 144, 159-169 (2012).

<sup>10</sup> Zena Objection at 11-12 (Mar 1, 2022).

<sup>11</sup> Zena Initial Complaint at 2 (May 24, 2021).

<sup>12</sup> Zena Objection at 11 (Mar 1, 2022).

<sup>13</sup> *Id.* at 12-13.

In its March 11, 2022 response to Zena's objection, PGE states that the information in this exhibit "has never been made public."<sup>14</sup> It is unclear whether PGE is referring to the specific part numbers or the Wallace Diagram in general. Zena's April 22, 2022 request provides an additional location information where the document is publicly available. In a separate Commission docket, the complete Wallace Diagram is publicly available, and has been so for almost three years.<sup>15</sup>

The information is unambiguously in the public domain. We note that the document is completely unredacted in the 2019 filing noted by Zena. The only difference between the confidential version of exhibit Zena Solar/123 in this case and the 2019 version are the specific text and part numbers as mentioned above, which appear only in the current exhibit at issue here, and to which Zena has stated no objection regarding the confidential designation of the text and part numbers. In the time since Zena filed its request and the issuance of this ruling, this diagram from the 2019 proceeding remains publicly available. PGE has taken no action since the receipt of this information—via Zena's April 22, 2022 request—to protect this information.

We modify the ALJ ruling and note that Zena Solar/123 is public information, insofar as it pertains to the information that has been publicly available for three years. We agree with Zena that the text and part numbers, which identify specific equipment information, and which do not appear on the 2019 version of the diagram, will maintain their confidential designation and shall remain redacted.

## **B. Witness Gross Modeling Results**

Exhibits PGE 204/205 are four images of fault model cases sponsored by PGE witness Gross. These documents were originally filed as part of Mr. Gross' testimony on August 10, 2021. In its request, Zena asks that the only the information that represents the results of the modeling be unredacted. Zena argues that this specific information was publicly available for six months as a part of Mr. Gross' supporting testimony.<sup>16</sup>

In its March 11, 2022 response, PGE confirmed that this information was available for six months, that is was discussed with Zena in December 2021, and no action was taken to redact it in docket filings until February of 2022.<sup>17</sup> PGE states that it waited two months because initially it did not agree with Zena's characterization of what the unredacted information revealed publicly. PGE states that once Zena noted it would object to the protected designation of certain information, PGE filed a new version of Mr. Gross' testimony and exhibits out of an abundance of caution and in order to protect the material at issue.<sup>18</sup> PGE states that the protective order allows information to be declared

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<sup>14</sup> PGE Response at 21, citing the Declaration of PGE Senior Director of Engineering Kellie Cloud at 14 (Mar 11, 2022).

<sup>15</sup> Zena Solar's Request, fn 21 (Apr 22, 2022).

<sup>16</sup> PGE filed an errata on February 11, 2022, with the information in Mr. Gross' testimony and in the exhibits redacted.

<sup>17</sup> PGE Response at 24 (Mar 11, 2022).

<sup>18</sup> *Id.* at 24.

confidential even after it is provided to parties via written notice.<sup>19</sup> PGE noted that the material was confidential, even though it was unredacted.<sup>20</sup>

It is unclear why PGE would choose not to correct the unredacted versions of these exhibits existing on the docket at that time, especially after it was brought to PGE's attention by Zena in December of 2021. The Commission's docketing system and all the material presented within individual dockets is publicly available to any interested person or case party. Therefore, the material was disclosed, whether or not any person or party chose to access it.

We agree with PGE that this information is and should remain protected. PGE did take steps to protect the information. It was marked confidential when initially filed, even though it was unredacted. The parties executed a non-disclosure agreement and PGE informed Zena in writing in December 2021 that PGE intended for the relevant portion of Mr. Gross' testimony to be treated as Protected Information.<sup>21</sup> Further, PGE took action, two months later, when it filed a redacted version.

Similar to our protective order, a recent Oregon court decision states that that, "the inadvertent failure to designate a document, testimony, or other information as 'Confidential' prior to or at the time of disclosure shall not operate as a waiver of the party's right to later designate that document, testimony, or other information as 'Confidential'."<sup>22</sup> The court has held that, "[t]he Designating Party must stamp or otherwise designate the document as 'Confidential' within a reasonable time period after the discovery of such error."<sup>23</sup> We determine that PGE acted within a reasonable time period.

Through the protective order, Zena agreed to the provision allowing PGE to designate material as protected even after the material is disseminated to parties. Finally, we agree with PGE that this specific information, regarding how portions of its system may react under certain scenarios, is commercially sensitive information and therefore may appropriately be labeled as protected by PGE. Therefore, we sustain the ALJ Ruling in this aspect and these exhibits will maintain their protected status.

### **C. SEL Website Printout:**

Exhibits Zena Solar/105 and PGE/105 are near-identical exhibits of Zena's independent System Impact Study (iSIS), most of which is not designated as protected information. The disputed information, for which Zena requests reconsideration, appears on an SEL website printout summarizing options and capabilities for an SEL-751A relay, attached to both exhibits.

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<sup>19</sup> *Id.* at 25. PGE refers to Order No. 21-111, Appendix A at 1 (General Protective Order § 5).

<sup>20</sup> The material in question was redacted in the errata filed by PGE on February 11, 2022.

<sup>21</sup> PGE Response at 25.

<sup>22</sup> *Wagner v. Umpqua Health Mgmt.*, Case No. 19CV25927.

<sup>23</sup> *Id.*

In the request, Zena states that the first option on the SEL-751A Feeder Protection Relay Summary, which is a list of several, specific options selected for the relay at the Wallace substation, should be unredacted.<sup>24</sup> Zena argues for removal of the protected designation because the information for this first option is designated by only one of the fourteen numbers in the part number, and the rest of the configuration options would be unable to be determined by this first number.<sup>25</sup> Thus, according to Zena, there would be no harm caused by the release of this information.

Next, Zena argues that the information was indirectly disclosed by inferences one could make from PGE Witness Gross' now-redacted testimony.<sup>26</sup> Further, Zena states that the protected information is applicable to other relays, the specifics of which have been publicly disclosed by PGE in other proceedings.<sup>27</sup>

In its response, PGE notes that it takes several steps, both physical and electronic, to secure its facilities and protect its system from bad actors. It takes steps to prevent public disclosure of details regarding system configuration and operational capabilities, to make any kind of physical or cyber-attack on any portion of its system more difficult.<sup>28</sup> PGE states that revealing the particular capability of the electronic relays at a specific location would make its system more vulnerable.<sup>29</sup> In particular, PGE states that, in addition to the information being confidential through its efforts, the information derives economic value from not being generally known; and disclosure would cause a significant harm.<sup>30</sup>

We agree with PGE that disclosure of this information could make PGE's system more vulnerable and that there is value in maintaining its protected status. We note that any developer wishing to interconnect to PGE's system may avail itself of PGE's facility and system specifics by signing an NDA. While inferences may be made by knowledgeable industry representatives regarding specific capabilities of different equipment used by PGE in its distribution system, it is not generally publicly available, and PGE has made an effort to maintain its confidentiality. Therefore, we agree that the information in Exhibits Zena Solar/105 and PGE/105 designated as confidential shall maintain protected status.

#### IV. ORDER

IT IS ORDERED that:

1. Exhibit Zena Solar/123 is public information, with the exception of the text and part nos. listed on the current version of the document; and

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<sup>24</sup> Zena Solar/105, Nelson/49 – Testimony and Exhibits of Jonathan Nelson (May 24, 2021).

<sup>25</sup> Zena Objection at 8 (Mar 1, 2022).

<sup>26</sup> *Id.* at 9.

<sup>27</sup> *Id.* at 9-11.

<sup>28</sup> PGE Response at 13.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 14.

2. Exhibits PGE 204/205 and exhibits Zena Solar/105 and PGE/105 will maintain their protected status.

Made, entered, and effective Oct 12 2022.



**Megan W. Decker**  
Chair



**Letha Tawney**  
Commissioner



**Mark R. Thompson**  
Commissioner



A party may request rehearing or reconsideration of this order under ORS 7 56.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001- 0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.