

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 5

In the Matter of

IDAHO POWER COMPANY,

Petition for Certificate of Public
Convenience and Necessity.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On January 10, 2023, Idaho Power Company filed a motion for a modified protective order to govern the acquisition and use of highly confidential information and commercially sensitive information produced or used in these proceedings. Idaho Power's motion sought expedited consideration under OAR 860-001-0080(3)(c). A general protective order in this matter was issued on August 26, 2022. On January 11, 2023, I granted the motion on an expedited basis to allow discovery to continue in advance of testimony deadlines.

STOP B2H Coalition filed responses to the motion on January 10, 2023 and January 25, 2023, and Idaho Power filed a reply.

Under our rules, I must conduct a *de novo* review of the terms of the modified protective order when a response is filed to a motion for a modified protective order.¹ I conducted a *de novo* review of the terms of the modified protective order and after considering the parties' filings, affirm my January 11, 2023 order granting the motion for a modified protective order.

Idaho Power sought a modified protective order because it received a discovery request from Staff for diagrams of certain Idaho Power infrastructure that qualifies as Critical Energy Infrastructure Information (CEII). Idaho Power asserts such information is highly confidential as it is prohibited from disclosure by federal regulations and therefore exempted from disclosure under Oregon's Public Records Law. Idaho Power asserts that the public release of this information would negatively affect the security of the transmission system and public health or safety. Idaho Power further states that a modified protective order is needed to protect commercially sensitive information that falls within the scope of ORCP 36(C)(1).

STOP B2H Coalition opposed the motion and asserts the modified protective order is overly broad and gives Idaho Power too much discretion to determine what

¹ OAR 860-001-0080(3)(e).

documents qualify as highly confidential under it. STOP B2H further argues the modified protective order does not allow the organization's representatives access to any highly confidential information because they are not represented by counsel.

I find that good cause exists to allow the modified protective order to remain in effect. The modified protective order is attached as Appendix A. I find that preserving the confidentiality of CEII is necessary and requires the heightened level of protection afforded by the modified protective order. Further, I find it reasonable to protect commercially sensitive information that falls within the scope of ORCP 36(C)(1) under the terms of the modified protective order.

In my January 11, 2023 order granting the modified protective order on an expedited basis, I explained that under its terms, parties may seek to become qualified to access specific Highly Confidential Information as described in paragraph 14 of the modified protective order. This would include parties not represented by counsel provided they comply with the requirements of the modified protective order's paragraph 14. Further, parties may challenge any designation of Highly Confidential Information as outlined in paragraphs 8-10 of the modified protective order. Per the terms of the modified protective order, the burden would lie with the designating party to show that such information is indeed protected by ORCP 36(C)(1) or otherwise exempt from disclosure under Oregon's Public Records Law.

A party may request that I certify this ruling to the Commission within 15 days.²

ORDER

IT IS ORDERED that the modified protective order, attached as Appendix A, remains in effect.

Made, entered, and effective on Mar 10, 2023.



John Mellgren
Administrative Law Judge

² OAR 860-001-0080(3)(f).

Appendix A

to

Motion for Modified Protective Order

in Docket No. PCN 5

MODIFIED PROTECTIVE ORDER
PCN 5

Scope of this Order

1. This order supplements General Protective Order No. 22-309 and governs the acquisition and use of “Highly Confidential Information” produced or used by any party to Docket PCN 5.

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 ORS 192.355(8) (exempt from disclosure under Oregon Public Records Law) or 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. 23-___

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 Docket PCN 5 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 (“ALJ”) 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 designation and provide written notice to the Commission and other parties.

Challenge to Designation of Highly Confidential Information

8. A party may informally challenge any designation of Highly Confidential Information by notifying the designating party. If any party objects to such designation by letter or email within five business days, the designating party must provide a written response to the party that describes in detail why the designated information is appropriately designated as Highly Confidential Information. The burden resides with the designating party to show that the challenged information is covered by ORCP 36(C)(1) or exempt from disclosure under the Public Records Law. 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.

9. If the dispute cannot be resolved informally, the challenging party may file a written objection with the ALJ. The objection filed with the ALJ must identify the information in dispute and include a certification that reasonable efforts to achieve an informal resolution have been unsuccessful. Within five days of the objection, unless otherwise ordered by the ALJ, the designating party must either remove the highly confidential designation or file a written response identifying 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). Broad allegations unsubstantiated by specific facts are not sufficient. If the designating party does not timely respond to the motion, the Commission will remove the highly confidential designation from the challenged information.

10. 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

11. Only persons qualified to receive Highly Confidential Information in accordance with Paragraphs 12-14 below (“HC Qualified Persons”) may access Highly Confidential Information designated by another party under this Modified Protective Order.

12. Persons automatically bound by this Modified Protective Order 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 signing the Consent to be Bound section of Appendix B are:

- (a) Counsel for a party;
- (b) Any person employed directly by counsel of record; and
- (c) An employee of the Regulatory Division at the Oregon Citizens’ Utility Board.

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 HC 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 C and submitting the Appendix to the designating party and to the Commission. Within 5 business days of receiving a signed copy of Appendix C, the designating party either must provide access to the requested Highly Confidential Information to the person who signed Appendix C or must file an objection under Paragraph 15.

Objection to Access to Highly Confidential Information

15. All HC Qualified Persons 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 HC Qualified Person, the designating party must provide the HC Qualified Person and his or her counsel written notice stating the basis for the objection. The parties must promptly confer and attempt to resolve the dispute on an informal basis before requesting review by an ALJ. After receipt of the written notice of objection required by this paragraph, the specific Highly Confidential Information may not be disclosed to the HC Qualified Person until the issue is resolved.

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.

Preservation of Confidentiality

17. All HC Qualified Persons must take reasonable precautions to keep Highly Confidential Information secure. A HC Qualified Person may reproduce Highly Confidential Information to the extent necessary to participate in these proceedings. A HC Qualified Person may discuss Highly Confidential Information obtained under this order only with other HC Qualified Persons who have obtained the same information. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.

18. Without the written permission of the designating party, any person given access to Highly Confidential Information under this order may not use or disclose such information for any purpose other than participation in this proceeding.

19. A Party wishing to utilize knowledge of Highly Confidential Information obtained in this docket for purposes of a subsequent proceeding must submit new data requests for the same information to the utility in the subsequent proceeding, under protective orders applicable to the subsequent proceeding and subject to the discovery rules then applicable for disclosure of Highly Confidential Information.

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. The information retained may not be disclosed to any person. Any other person retaining Highly Confidential Information at the conclusion of this proceeding must return it to the designating party within 90 days after final resolution of these proceedings or must destroy the Highly Confidential Information and provide an affidavit to the designating party swearing that the Highly Confidential Information has been destroyed. 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 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
CONSENT TO BE BOUND
PCN 5**

I. Consent to be Bound:

This Modified Protective Order and Appendix B governs the use of Highly Confidential Information in these proceedings.

_____ (“Party”) agrees to be bound by the terms of the Modified Protective Order and certifies that it has an interest in this proceeding that is not adequately represented by other parties to the proceedings.

Signature: _____

Printed Name: _____

Date: _____

II. Persons Qualified under Paragraph 13:

I have read the Modified Protective Order and agree to be bound by its terms.

I certify that:

- a. I agree to keep the information in a secure manner as required by the Commission’s rules and destroy it at the conclusion of this proceeding as required by Paragraph 20.
- b. 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.
- c. The party with which I am associated has a legitimate and non-competitive need for the Highly Confidential Information and not simply a general interest in the information.

By: Signature: _____ Date: _____
 Printed Name: _____
 Address: _____
 Employer: _____
 Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

APPENDIX C

Signatory Page for Other Persons Seeking Qualification to Access Information Under Paragraph 14 PCN 5

Persons Seeking Qualification Pursuant to Paragraph 14.

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

I certify that:

- a. I agree to keep the information in a secure manner as required by the Commission’s rules and destroy it at the conclusion of this proceeding as required by Paragraph 20.
- b. 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.
- c. I or the party with which I am associated has a legitimate and non-competitive need for the Highly Confidential Information and not simply a general interest in the information.

By: Signature: _____ Date: _____
 Printed Name: _____
 Address: _____
 Employer: _____
 Associated Party (if applicable): _____
 Job Title: _____

If not an employee of a party, describe practice and clients: