

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 416

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Request for a General Rate Revision; and
2024 Annual Power Cost Update.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED AS REVISED

On April 19, 2023, Portland General Electric Company filed a motion for a modified protective order to provide additional protections for highly confidential, commercially sensitive information requested by parties during discovery. Specifically, PGE indicates that this proceeding will implicate information it considers highly confidential regarding PGE's generation resources and related third-party contracts and information that PGE classifies as critical energy infrastructure information. PGE explains that public disclosure of this information would harm PGE and its customers by violating confidentiality obligations to third parties, disrupting negotiations regarding generation resources, and putting PGE at a commercial disadvantage in procurement efforts. PGE represents that it provided notice to the parties who have intervened in this proceeding, and that as of the filing of its motion, no party has stated an objection. On April 20, 2023, Staff filed a response requesting the addition of language to paragraph 4 of Appendix A to allow for an alternative to physical inspection of highly sensitive infrastructure information. Staff represented in its filing that PGE agreed to the proposed amendment, which would allow PGE and a qualified person requesting access to highly sensitive infrastructure information to agree to an alternate method of inspection to address the burden on parties of only providing for physical inspection of such materials.

Under the modified protective order requested by PGE, access to highly protected information would be restricted to Commission employees (including assigned DOJ attorneys), and employees or counsel of the Oregon Citizens' Utility Board who sign the consent to be bound section of Appendix B. Under PGE's proposed modified

protective order, representatives for other parties, including counsel, may sign the consent to be bound section of Appendix B and access the highly confidential information “upon the mutual agreement of that party and PGE, and subject to any additional restrictions mutually agreed-upon” or if ordered by the Administrative Law Judge. PGE explains that the goal of its proposed protections is to minimize the number of persons who have access to the highly confidential information and to ensure that it does not fall into the hands of those who would cause harm.

Under many of the modified protective orders utilized in Commission proceedings, counsel for parties to the docket are eligible to sign the consent to be bound section of Appendix B to access the highly confidential information and parties may seek to qualify additional persons on a case-by-case basis. Similarly, under the modified protective order issued in the company’s last general rate case counsel could access highly confidential information by signing the consent to be bound section of Appendix B. The highly confidential information in that case was similar to that addressed in PGE’s request here. Generally, many modified protective orders also establish a process for objecting to the qualification of any individual, including counsel. During the pendency of such an objection, the highly confidential information may not be disclosed to the person subject to the objection. Under PGE’s requested modified protective order, the process proposed by PGE would appear to require counsel for a party to either reach agreement with PGE or obtain an ALJ ruling prior to submitting the Appendix B signatory page. PGE does not address in its motion the need for counsel for parties to reach agreement with the company or obtain an ALJ ruling ahead of submitting Appendix B or why a provision for objecting to a qualified individual is inadequate to address any concerns with qualifying counsel for a particular party.

I find good cause to issue a modified protective order with qualification provisions consistent with those in place for PGE’s prior general rate case and including the amendment proposed by Staff. Specifically, counsel for parties may sign the consent to be bound section of Appendix B to access the highly confidential information, parties may seek to qualify additional persons on a case-by-case basis, and to include a process for objecting to the qualification of any individual, including counsel. During the pendency of such an objection, the highly confidential information may not be disclosed to the person subject to the objection. The modified protective order is attached as Appendix A. The modified protective order will function alongside the existing modified general protective order, No. 23-039.

As requested, I issue this protective order on an expedited basis pursuant to OAR 860-001-0080(3)(c). This expedited action does not foreclose a party from seeking de novo review of this modified protective order under OAR 860-001-0080(3)(d) and (e).

ORDER

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

Made, entered, and effective on Apr 20, 2023.



Alison Lackey
Administrative Law Judge



MODIFIED PROTECTIVE ORDER
UE 416

Scope of this Order:

1. This order supplements General Protective Order No. 23-039 and governs the acquisition and use of “Highly Confidential Information” produced or used by any party to docket UE 416.

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) or the exemptions under Oregon Public Records law, ORS 192.345 and 192.355 (OPRL);
 - (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. All Highly Confidential Information in OPUC Docket UE 416 will be provided either through: (a) the Commission’s discovery portal; (b) a password protected and encrypted electronic ZIP file distributed to Qualified Persons who have signed the appropriate protective order; or (c) for material PGE identifies as highly sensitive infrastructure information, through physical inspection at a place identified by PGE, or in a manner mutually agreed upon by the requestor and PGE. Each page of a document containing Highly Confidential Information filed with the Commission or provided to Qualified Persons under this order, electronically or through a designated shared workspace, must be clearly marked as Highly Confidential Information and maintained in a separate, secure folder. Any file or folder containing Highly Confidential Information must be designated "Highly Confidential." If the cells in a spreadsheet or other tabular document include information that has been designated as highly confidential and that would be impractical or unduly burdensome to mark as required above, the party designating information as highly confidential need not comply with this requirement but must identify that information in a way that reasonably provides the Commission and Qualified Persons with sufficient identification of the information to be protected.

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. 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 5 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 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. UE 416**

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 Oregon Citizens Utility Board, 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 Oregon Citizens Utility Board and PGE, and I am qualified to receive Highly Confidential Information; **or**
- (c) I am not an employee of the Oregon Citizens Utility Board, 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:
