

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2033

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Oregon Transportation Electrification  
Plan.

MODIFIED  
PROTECTIVE  
ORDER

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

On May 19, 2023, Portland General Electric Company filed a motion for a modified protective order (MPO) to provide additional protection for highly sensitive, non-public information and program costs related to the company's future procurement efforts. On September 30, 2019, PGE filed its inaugural transportation electrification plan. The Commission accepted PGE's plan at a regular public meeting on February 13, 2023. On October 18, 2022, the Commission approved PGE's 2022 monthly meter charge budget and associated infrastructure measure applications. The Commission approved an extension of time for PGE to file its next plan on June 1, 2023.

PGE states that it will need to provide highly protected information as a part of these proceedings going forward. According to the company, public disclosure of such information may "damage or distort negotiations or agreements regarding implementing elements contained in the plan and hinder the company's efforts to acquire and manage programs and equipment that support the plan in the most cost-effective manner for customers."<sup>1</sup> PGE declares that the information is of a nature that, if known by potential bidders or providers, could potentially influence bids and disrupt PGE's efforts to obtain fair terms in contract negotiations or agreements, or put PGE at a disadvantage if pursuing delivery of the programs directly.

The specifics of PGE's proposed MPO prohibit persons involved in current or future electrification plan programs and projects as vendors, or persons who could reasonably be expected to be involved in such programs and projects as a vendor, from initially being granted access to highly protected information. Such persons may request access and be considered on a case-by-case basis. For all other intervenors,

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<sup>1</sup> PGE Motion for a Modified Protective Order at 1-2 (May 19, 2023).

highly protected information will be provided via the PUC discovery portal, through a password and encrypted electronic file, or through physical inspection.

Under OAR 860-001-0080(3), a party may file a motion for an MPO that provides additional protection beyond the protection provided by a general protective order. Any such motion must include: 1) the parties and the exact nature of the information involved, 2) the legal basis for the claim the information is protected under ORCP 36(C)(1) or the Public Records Law, 3) the exact nature of the relief requested, 4) the specific reasons the relief is necessary, 5) a detailed description of the intermediate measures explored by the parties and why these measures are insufficient, 6) a certification that the requesting party conferred with the parties and whether those parties support the motion, and 7) a draft of the requested modified protective order. In its motion, PGE provided sufficient information to satisfy these specific rule requirements. Under the proposed MPO, highly confidential information is accorded additional protections by requiring that individuals who are not Commission Staff or associated DOJ Staff to sign the appropriate page under Appendix B or Appendix C of the MPO prior to gaining access.

I find that good cause exists to issue the MPO, which is provided as Attachment A. The modified protective order will function alongside the existing general protective order, Order No. 20-037. The adoption of the MPO does not foreclose a party from seeking *de novo* review of this modified protective order under OAR 860-001-0080(3)(d)&(e).

**ORDER**

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

Made, entered, and effective on May 31, 2023.



Christopher J. Allwein  
Administrative Law Judge



**MODIFIED PROTECTIVE ORDER**

DOCKET NO. UM 2033

**Scope of this Order:**

1. This order supplements General Protective Order No. 20-037 and governs the acquisition and use of Highly Protected Information produced or used by any party to Docket UM 2033.

**Designation of Highly Protected Information:**

2. Any party may designate as Highly Protected 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 extremely commercially sensitive and requires additional restrictions on who may access the information than that provided under the Commission's general protective order.
3. To designate information as Highly Protected Information, a party must place the following legend on the material:

HIGHLY PROTECTED INFORMATION  
SUBJECT TO MODIFIED PROTECTIVE ORDER NO. \_\_\_\_\_

The party should make reasonable efforts to designate as Highly Protected Information only the portions of the information that satisfies paragraph 2 of this Modified Protective Order.

4. All Highly Protected Information in OPUC Docket UM 2033 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; (c) or through physical inspection at a place identified by PGE, or in a manner mutually agreed upon by the requestor and PGE, for material PGE identifies as highly sensitive information.

Each page of a document containing Highly Protected 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 Protected Information and maintained in a separate, secure folder. Any file or folder containing Highly Protected Information must be designated "Highly Protected Information." If the cells in a spreadsheet or other tabular document include information that has been designated as highly protected and that would be impractical or unduly burdensome to mark as required above, the party designating information as highly protected 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 Protected Information disclosed by a designated party to a person qualified to access Highly Protected Information through informal discovery or by means of Commission's Huddle website will be marked "Highly Protected Information" and uploaded to a file folder designated "highly protected information" in Huddle, if applicable.
6. A party may designate as Highly Protected Information any information previously provided by giving written notice to the Commission and other parties. Parties in possession of newly designated Highly Protected 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 Protected 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 Protected or Highly Protected:**

8. A party may informally challenge any designation of Highly Protected 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). If a party challenges the "Highly Protected Information" designation, the designating party bears the burden of showing that the "Highly Protected Information" designation is necessary.
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 (5) business days of service of the objection, the designating party must either remove the challenged 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 (5) business days of service of an objection. The designating party may file a sur-reply within three (3) 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 Protected Information:**

12. Only Qualified Persons may access Highly Protected Information designated by another party under this Modified Protective Order. Persons automatically bound and qualified to access Highly Protected Information are:
  - a. Commission employees; and
  - b. Assistant Attorneys General assigned to represent the Commission.
13. Qualified Persons may access Highly Protected Information upon a party signing Appendix B are:
  - a. An employee or counsel of Portland General Electric Company or the Citizens' Utility Board of Oregon;
  - b. An employee for NW Energy Coalition;
  - c. Counsel for Alliance of Western Energy Consumers; and
  - d. Counsel for any other party, upon the mutual agreement of that party and Portland General Electric Company, 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 1 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 No. 20-037 may seek to qualify other persons to access certain specific Highly Protected Information by having those persons complete and sign Appendix C, and submitting that information to the designating party and the Commission. Within five business days of receiving a copy of Appendix C, the designating party must either provide the access to the requested information designated as Highly Protected Information or file an objection under paragraph 15.

**Objection to Access to Highly Protected Information:**

15. All persons qualified to have access to Highly Protected Information will have access to Highly Protected 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, the designating party must provide the Qualified 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 five (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 Protected Information may not be disclosed to the person subject to the objection.

**Use of Highly Protected Information:**

17. All Qualified Persons must take reasonable precautions to keep Highly Protected Information secure. Qualified Persons may reproduce Highly Protected Information to the extent necessary to participate in these proceedings. A Qualified Person may discuss Highly Protected 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 Protected Information under this order may not disclose Highly Protected 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 Protected 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 Protected 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 Protected 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 Protected Information for a period of five (5) 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 (2) weeks prior to the release of the Highly Protected Information.

**CONSENT TO BE BOUND AND SIGNATORY PAGE**

Docket UM 2033

**I. Persons Qualified to access Highly Protected Information under Paragraph 13:**

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

I certify that:

I understand that ORS 756.990(2) allows the Public Utility Commission of Oregon (“Commission”) to impose monetary sanctions if a party subject to the jurisdiction of the Commission violates an order of the Commission.

The party I am associated with has a legitimate and non-competitive need for the Highly Protected Information for this proceeding 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: \_\_\_\_\_

**CONSENT TO BE BOUND AND SIGNATORY PAGE**

Docket UM 2033

**I. Persons Seeking Qualification under Paragraph 14:**

I have read the Modified Protective Order, agree to be bound by the terms of the order, and provide the following information to seek access to certain specific information designated as Highly Protected Information.

|  |  |              |
|--|--|--------------|
| <b>Signature:</b>  |  | <b>Date:</b> |
| <b>Printed Name:</b>   |  |              |
| <b>Physical Address:</b>   |  |              |
| <b>Email Address:</b>  |  |              |
| <b>Employer:</b>   |  |              |
| <b>Associated Party:</b>   |  |              |
| <b>Job Title:</b>  |  |              |
| <b>If Not employee of party, description of practice and clients:</b>  |  |              |
| <b>I seek access to the following specific information designated as Highly Protected Information for the following reasons:</b> |  |              |