

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 426

In the Matter of

IDAHO POWER COMPANY,

Application for a General Rate Revision.

**MODIFIED
PROTECTIVE ORDER**

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

On December 13, 2023, Idaho Power Company filed a motion for a modified protective order with expedited consideration requested. Idaho Power filed a notice of use of the general protective order on December 12, 2023. OAR 860-001-0080(3)(c) governs expedited consideration of motions for a modified protective order and allows the ALJ to issue a modified protective order within 3 business days to facilitate filing of protected information and discovery.

On December 18, 2023, I issued Order No. 23-478 preliminarily granting Idaho Power's motion for a modified protective order with modifications. That order expressed concerns regarding Sections 2(d), 4(a), and 16 of Idaho Power's proposed modified protective order. Because Idaho Power's original motion lacked sufficient explanations for its requested provisions, I asked Idaho Power to file a supplement to its motion by December 28, 2023. Idaho Power filed its supplement on December 27, 2023. No party filed a response to Idaho Power's motion by the January 4, 2024, deadline, and Idaho Power's supplement notes that Commission Staff and the Oregon Citizen's Utility Board (CUB) support the supplement.

Idaho Power states the modified protective order is needed to prevent public disclosure of highly confidential information and asserted the resulting harm to Idaho Power and its customers. Specifically, Idaho Power states that responses to standard data requests contain highly confidential information related to the Company's tax filings, financial forecasts, Company load growth projections that include sensitive customer load, and highly sensitive wages and compensation information. Idaho Power also asserts it anticipates other parties will seek additional highly confidential information throughout these proceedings. Idaho Power asserts that public disclosure of this information could be detrimental to Idaho Power and its customers.

Idaho Power's supplement explains the negotiations with Commission Staff and CUB to develop its proposal and how the terms changed to accommodate the parties. Idaho Power's supplement provides additional explanation for the need for Section 2(d) and "proposes to exclude the tax-related information as well as the Company's load growth

projections that include sensitive customer load information” from the categories of information subject to the highly confidential designation, instead designating them as confidential under the general protective order.¹ Idaho Power’s supplement also explains the need for Sections 4(a) and 16, and notes a willingness to revisit their requirements should its provisions become an issue in the future.

Finally, Idaho Power’s supplement notes an issue with U.S. Mail and a missing USB drive containing a complete copy of its initial filing in this docket. Idaho Power states it “understands the two envelopes that contained the filing were tampered with and the USB was lost or stolen at some point in transit via U.S. Mail.”² Idaho Power “requests that any references to transmittal of hard copies or removable media (USB drive) via U.S. First Class Mail instead be replaced with hand delivery or traceable delivery service.”³

Although Idaho Power’s December 13 motion lacked the requisite detail to justify the terms of its requested modified protective order, Idaho Power’s supplement to its motion for a modified protective order provides the explanation and justification required to support a modified protective order containing terms not usually seen in Commission protective orders.

I find that good cause exists to grant Idaho Power’s motion for a modified protective order with the modifications requested by Idaho Power in its supplement.

Should the parties believe that the modified protective order, attached as Appendix A, does not reflect what Idaho Power requested in its supplement, they are advised to raise it at the prehearing conference or in a written filing by January 12, 2024, at 3:00 p.m. PST.

ORDER

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

Made, entered, and effective on Jan 8, 2024.



John Mellgren
Administrative Law Judge



¹ See Idaho Power Supplement to Motion for a Modified Protective Order at 4 (Dec. 27, 2023).

² *Id.* at 10.

³ *Id.*

MODIFIED PROTECTIVE ORDER
Docket UE 426

Scope of this Order:

1. This order supplements General Protective Order No. 23-132 and governs the acquisition and use of "Highly Confidential Information" produced or used by any party to Docket UE 426.

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;
 - b. Is not publicly available;
 - c. Is not adequately protected by the general protective order; and
 - d. Is related to the Company's financial forecasts, highly sensitive wages and compensation information, or competitively or commercially sensitive information requested in discovery that Idaho Power and the requesting party agree is appropriately designated as highly confidential.
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-___

Additionally, each paper copy of a document containing Highly Confidential Information that may be provided to Qualified Persons under this Order (as defined in Paragraphs 12 and 13) must be printed on GREEN paper, separately bound, and placed in a sealed envelope or other appropriate container which must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. 23-___ AND CONTAINS
HIGHLY CONFIDENTIAL INFORMATION. THE INFORMATION MAY BE
SHOWN ONLY TO QUALIFIED PERSONS AS DEFINED IN
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 Docket UE 426 will be provided either through:

- a. **Electronic transmission, storage and filing:**
- i. **For transmission to or among Qualified Persons or filing Highly Confidential Information at the Commission:** Any Highly Confidential Information sent via email must be encrypted using a FIPS 140-2 approved algorithm such as AES-128, AES-192 or AES-256. Free tools such as 7zip, WinZip and PGP can provide such encryption. The password must be sent separately from the encrypted file. Alternatively, secure email gateways which secure the transmission of email through the use of password protected portals (e.g., Proofpoint's Email Encryption) can be used as long as those services are managed and licensed at an enterprise level (not a personal account). Highly Confidential Information transmitted through these secure email gateways does not require additional FIPS encryption.
 - ii. **For storage of Highly Confidential Information or transmission among Qualified Persons:** Cloud-based file sharing and collaborative solutions such as Box, DropBox, SharePoint Online, etc. may be used if the service is managed and licensed through an enterprise level license, meaning no personal accounts may be used. The service must be configured to require multifactor authentication and must store its data exclusively in the United States.
- b. **Paper or USB Drive:**
- i. **Removable Media:** Any Highly Confidential Information transferred on removable media (USB Drive) must be encrypted using Microsoft Bitlocker and sent via hand delivery or other traceable delivery service using an opaque envelope or wrapping. The password must not be sent with the encrypted media.
 - ii. **Paper Copy:** If paper copy filing is preferred, a party may file Highly Confidential Information with the Administrative Hearings Division, consistent with the Commission's hard copy filing procedures. Any paper copies shall be printed on GREEN paper consistent with Paragraph 3.
 - iii. Qualified Persons must store the paper copy and/or USB drive in a locked room or cabinet dedicated to the storage of Highly Confidential Information when not in use.
- c. **Discovery:** For discovery, a read-only database on Huddle, the Commission's discovery portal may be used (no downloads). If a Qualified Person needs a working version of a document provided via Huddle, the Qualified Person may request it to be provided via electronic or hard copy methods described in this Modified Protective Order.

Each page of a document containing Highly Confidential Information filed with the Commission or provided to Qualified Persons under this order must be clearly marked as Highly Confidential Information. 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 Administrative Law Judge ("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 (5) 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 (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 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 Oregon Citizens' Utility Board; or
 - b. Any other party or party representative, upon the mutual agreement of that party and Idaho Power, and subject to any additional restrictions mutually agreed-upon.

Any dispute that arises under this section will be resolved under Paragraphs 14 and 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 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 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, and only in relation to this proceeding. Qualified Persons commit to abide by the following terms:

- a. The entity with which the Qualified Person is associated shall utilize industry-accepted firewalls, up-to-date anti-virus software, and non-end-of-life operating systems;
 - b. The entity with which the Qualified Person is associated shall secure electronic access to the entity's information systems containing Highly Confidential Information;
 - c. The entity with which the Qualified Person is associated shall store, process, and maintain any and all Highly Confidential Information on designated target servers that reside physically within the boundaries of the United States;
 - d. The entity with which the Qualified Person is associated shall not transfer any Highly Confidential Information outside of its network via unencrypted means;
 - e. The entity with which the Qualified Person is associated shall not process or transfer Highly Confidential Information to any unencrypted portable or laptop computing device, or any other unencrypted portable storage medium;
 - f. The entity with which the Qualified Person is associated shall use two-factor authentication for remote access to systems that access or store Highly Confidential Information;
 - g. The entity with which the Qualified Person is associated shall secure and prevent misuse of its own email resources;
 - h. The entity with which the Qualified Person is associated shall not store any Highly Confidential Information on any personal devices.
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 UE 426

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 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. 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 Idaho Power Company 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 Oregon Citizens’ Utility Board 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:
