

ENTERED Mar 06 2024

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 435

In the Matter of

PORLTAND GENERAL ELECTRIC
COMPANY,

Request for a General Rate Revision.

**MODIFIED
PROTECTIVE
ORDER**

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On February 29, 2024, Portland General Electric Company filed a motion for a modified protective order to provide additional protections for highly confidential, sensitive, non-public information in this proceeding. PGE believes good cause exists to issue an order that supplements General Protective Order No. 23-132.

Specifically, and because PGE states it anticipates additional parties will intervene, the company indicates this proceeding will implicate highly protected information, including but not limited to, PGE's resource procurements and third-party contracts. PGE asserts this material should be treated as highly protected due to the heightened security risks associated with its release, such as sensitive infrastructure information and public disclosure of this information would harm PGE and its customers.

In its motion PGE sought expedited treatment and requested the response time be shortened to two days. On March 1, 2024, I issued a ruling shortening the response time until March 4, 2024. No responses were received.

Under the modified protective order requested by PGE, access to highly protected information would be restricted to Commission employees, Assistant Attorney Generals assigned to represent the Commission, PGE employees or counsel (if the highly protected information is provided by the company), employees or counsel of the Oregon Citizens' Utility Board, and any other party or party representative upon mutual agreement of the party and PGE (subject to any additional restrictions mutually agreed upon). The motion states that other parties to the docket that seek to be qualified will be done on a case-by-case basis, if agreed to by PGE or ordered by the Administrative Law Judge. The modified protective order will allow transmission of highly protected information by requiring individuals complete and sign the page of Appendix B.

PGE requests that all highly protected information 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) 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. PGE and other parties are reminded that the Commission's discovery portal, Huddle, is a repository for discovery only. Other highly confidential information should be submitted via method (b) or (c) above.

Under OAR 860-001-0080(3), a party may file a motion for a modified protective order that provides additional protection beyond the protection provided by a general protective order. In its motion, PGE provided sufficient information to satisfy these specific rule requirements.

I find that good cause exists to issue the modified protective order, which is attached as Appendix A, on an expedited basis. The modified protective order will function alongside General Protective Order No. 23-132. The adoption of the modified protective order does not foreclose a party from seeking *de novo* review of this modified protective order under OAR 860-001-0080(3)(d) & (e). 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 Mar 6, 2024.

Katharine Mapes

Katharine Mapes
Administrative Law Judge



MODIFIED PROTECTIVE ORDER
UE 435

Scope of this Order:

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

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) 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 Protected Information, a party must place the following legend on the material:

HIGHLY PROTECTED INFORMATION
SUBJECT TO MODIFIED PROTECTIVE ORDER NO. _____

4. 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. 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 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 native 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. All Highly Protected Information in OPUC Docket UE 435 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) 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.

6. 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 Confidential Information" and uploaded to a file folder designated "highly protected" in Huddle, if applicable.
7. 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.
8. 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 Highly Protected:

9. 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) and that the "Highly Protected Information" designation is necessary. Any party that requests that the ALJ hold a conference to help resolve disputes about proper designation.
10. 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.
11. 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.

12. 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 Protected Information:

13. 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
 - (c) PGE employees or counsel if the Highly Protected Information is provided by PGE.
14. Persons qualified to access Highly Protected Information upon a signing the Consent to be Bound section of Appendix B are:
 - (a) An employee or counsel of PGE or the Citizens Utility Board of Oregon and have a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information; or
 - (b) Any other party or party representative, upon the mutual agreement of that party and PGE, 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 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.

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, 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.

Objection to Access to Highly Protected Information:

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 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, and only in relation to this proceeding.
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 or Highly Protected 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 Protected Information or Highly Protected Information.

**APPENDIX B: QUALIFICATION OF PERSONS TO RECEIVE
HIGHLY PROTECTED INFORMATION
DOCKET NO. 435**

I. Consent to Be Bound—Persons Qualified pursuant to Paragraph 14: Highly Protected 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 PGE or the Citizens Utility Board of Oregon, and have a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information; **or**
- (b) I am not an employee of PGE or the Citizens Utility Board of Oregon, and I have come to a mutual agreement that I am qualified to receive Highly Protected Information; **or**
- (c) I am not an employee of PGE or the Citizens Utility Board of Oregon, and the Administrative Law Judge has issued a ruling allowing my qualification to receive Highly Protected Information

I provide the following information.

By: Signature: _____ Date: _____

Printed Name: _____

Employer: _____

Physical Address: _____

Email Address: _____

Job Title: _____

If not employee of party, description of associated party, your practice and clients:
