

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2274

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

2023 All-Source Request for Proposals.

MODIFIED
PROTECTIVE
ORDER

**DISPOSITION: MODIFIED PROTECTIVE ORDER ADOPTED WITH
MODIFICATIONS**

On March 8, 2024, Portland General Electric Company (PGE) filed a motion for a modified protective order (MPO) in this docket. PGE requests that the MPO be put in place by March 26, when benchmark scores will be filed with the Commission so that the next phase of bids can be opened and scored. On March 18, 2024, NewSun Energy LLC and the Oregon Solar + Storage Industries Association (OSSIA) filed responses to PGE's motion objecting to the MPO as drafted. PGE filed its response on March 22, 2024.

NewSun and OSSIA object to the protective order on several grounds. First, they object to what they view as a lack of specificity in the definition of highly protected information, writing that "Paragraph 2 of PGE's proposed MPO is identical to the terms of the general protective order" in terms of the scope of information it covers.

I agree with NewSun and OSSIA that the scope of information protected by the MPO is insufficiently specific. NewSun and PGE present two proposals to address this lack of specificity. NewSun suggests adding that information covered under the MPO must be "not adequately protected by the general protective order" and be "individually identifiable information from third-party bidders." PGE, on the other hand, argues that NewSun's definition would not adequately protect modeling and evaluation information.

It would instead add that highly protected information must be "extremely commercially sensitive and require[] additional restrictions on who may access the information than that provided under the Commission's general protective order" and "include[] third-party bidder information, associated evaluation, scoring, and modeling and results, which may include highly commercially sensitive information regarding existing resources."

I agree with PGE that it is appropriate to protect certain evaluation and modeling information beyond individually identifiable information from third-party bidders. Accordingly, I adopt PGE's revised definition of highly protected information. I note that NewSun and other parties will have the ability to challenge individual designations that they believe are overbroad.

Next, NewSun argues that additional protections are needed to ensure that PGE employees are not able to use highly protected information for an improper purpose. In particular, NewSun seeks to add that any person qualified under the MPO "may not participate in PGE solicitation process on behalf of a benchmark or affiliate bidder, provide services to the affiliate, or discuss potential or actual benchmark or affiliate bids with any member of the benchmark or affiliate teams." PGE argues in response that this is a collateral change to the competitive bidding rules which should be promulgated, if at all, through a rulemaking proceeding.

I agree with PGE and reject NewSun's proposed change. The Commission has already adopted competitive bidding rules¹ and has also adopted conditions for participation of PGE's affiliate in the competitive bidding process.² PGE is bound by those rules and that decision.³ It would be inappropriate for the Administrative Law Judge (ALJ) to adopt further such rules in the guise of a MPO and I decline to do so here.

Next, NewSun argues that some individuals should be permitted to access highly protected data without PGE consent or a ruling from an ALJ. As drafted, only Commission employees and Assistant Attorney Generals assigned to represent the Commission may access protected information without agreement of the Company or an order by the ALJ. NewSun would add a new category of entities that could access highly protected information on signing the protective order—"Persons (including attorneys) that are not involved in PGE's ongoing 2023 RFP solicitation process as bidders." PGE responds that while language similar to this was used in a prior RFP proceeding, the MPO also provided for on-site review for entities other than the Oregon Citizens' Utility Board or Staff seeking to review such highly confidential information. PGE also states that it has already agreed with Northwest & Intermountain Power Producers Coalition's attorneys that PGE will not object to their signatory pages under the MPO.

¹ See, e.g., OAR 860-089-0300(1)(b) (stating "Any individual who participates in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company may not participate in the preparation of an electric company or affiliate bid and must be screened from that process.")

² *In the Matter of Portland General Electric Company, Application for Affiliated Interest Transaction with Portland Renewable Resource Company, LLC*, Docket No. UI 489, Order No. 23-294 (Oct. 18, 2023).

³ And PRR, as a bidder, does not have access to the highly protected information consistent with the Commission's earlier orders.

I reject NewSun’s proposed change. In doing so, I am guided by the fact that none of the entities to whom it would apply objected to the MPO and by the lack of an on-site review provision. While PGE’s proposed language may indeed be overbroad in some circumstances, I am not persuaded that it is overbroad in this particular circumstance. MPOs are, of necessity, a balancing act and in this proceeding, I believe the balance struck by PGE is a reasonable one.

Finally, NewSun seeks additional time to respond to PGE’s response to an objection to a designation of highly confidential information—namely it seeks the 15 days PGE has to file a response rather than the 5 days provided for under the MPO. I find this change reasonable and adopt it but do not adopt NewSun’s other wording changes to that paragraph.

ORDER

Accordingly, Portland General Electric’s Modified Protective Order is approved with the modifications discussed herein.

Made, entered, and effective on Mar 25, 2024.



Katharine Mapes
Katharine Mapes
Administrative Law Judge



MODIFIED PROTECTIVE ORDER
UM 2274

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 docket UM 2274.

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;
 - (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; and
 - (d) includes third-party bid information, associated evaluation, scoring, and modeling, and results, which may include highly commercially sensitive information regarding existing resources.
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. 24-____

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 2274 will be provided either through: (a) the Commission’s discovery portal; or (b) a password-protected and encrypted electronic ZIP file distributed to Qualified Persons who have signed the appropriate protective order.

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." 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" 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 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) and 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 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 fifteen calendar days of service of a response. The designating party may file a sur-

reply within three business days of service of a reply. 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. 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;
 - 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; or
 - c. Any party or party representative that the ALJ determines should have access under paragraph 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 Protected Information:

14. 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. Within five business days of receiving a copy of Appendix B, the designating party must either provide the access to the requested information designated as Highly Protected Information or file an objection under paragraphs 13 and 14. 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 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:

16. 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 only. 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.
17. Without the written permission of the designating party, any person given access to Highly Protected Information under this order may not use or disclose Highly Protected 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 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:

20. The Commission will preserve the designation of information as 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. UM 2274**

I. Consent to Be Bound—Persons Qualified pursuant to Paragraph 13: 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, I have a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information, and I have come to a mutual agreement with PGE 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, I have a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information, 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: _____

Physical Address: _____

Email Address: _____

Employer: _____

Associated Party: _____

Job Title: _____

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