

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 6

In the Matter of

PORLAND GENERAL ELECTRIC
COMPANY,

Petition for Certificate of Public
Convenience and Necessity.

MODIFIED PROTECTIVE ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On March 27, 2024, Portland General Electric Company (PGE) filed a notice of intent to file a petition for a certificate of public convenience and necessity (CPCN). On March 29, 2024, PGE filed a motion for a modified protective order with expedited consideration requested.

Under our rules, I am to provide expedited review of any motion for a modified protective order and may issue a modified protective order within three business days to facilitate the filing of protected information and discovery.¹ In providing expedited review and issuing a modified protective order, it does not preclude parties from filing responses to the motion for a modified protective order.² If a response is filed to the motion for a modified protective order, I am to conduct a *de novo* review of the terms of the modified protective order and issue a ruling explaining my determination.³

PGE states the modified protective order is needed to prevent public disclosure of highly protected information, including critical energy infrastructure information (CEII). PGE explains that “CEII is specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure, physical or virtual, that relates to details about that infrastructure, including distribution or transmission * * *.” PGE asserts that public disclosure of this information could “harm PGE and its customers by risking the security of PGE’s critical infrastructure and potentially public health and safety.” PGE also anticipates that other highly protected information may be requested by parties in discovery during this proceeding. PGE explains that Commission Staff indicated it did not oppose PGE’s motion.

I find that PGE’s motion meets the requirements of OAR 860-001-0080(a) and that good cause exists to grant it. In doing so, I make clear that individuals participating in this proceeding without counsel may seek to become qualified to access highly protected information under paragraph 14 of the modified protective order.

¹ OAR 860-001-0080(3)(c).

² OAR 860-001-0080(3)(d).

³ OAR 860-001-0080(3)(e).

Given that no other individuals or entities have sought party status in this proceeding and PGE has not yet filed its CPCN petition, I extend the deadline to file a response to PGE's motion until fourteen days after the date of the prehearing conference in this docket.⁴ That deadline may be further extended at the prehearing conference or in the prehearing conference memorandum to ensure that future participants in this proceeding are not prejudiced by the expedited issuance of the modified protective order. PGE may file a reply to any responses within twenty-one days after the date of the prehearing conference in this docket.

ORDER

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

Made, entered, and effective on Apr 2, 2024.



A handwritten signature in blue ink that reads "John Mellgren".

John Mellgren
Administrative Law Judge

⁴ The prehearing conference has not yet been scheduled.

MODIFIED PROTECTIVE ORDER

PCN 6

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 PCN 6.

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 ORS 192.355(8) (exempt from disclosure under Oregon Public Records Law due to federal law or regulation) or ORCP 36(C)(1) (a trade secret or other confidential research, development, or commercial information);
 - (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. _____**

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. Until and unless the OPUC Filing Center changes the process, all Highly Protected Information in Docket PCN 6 will be filed with the OPUC Filing Center (puc.filingcenter@state.or.us) with a password protected and encrypted electronic ZIP file and distributed to parties electronically who have signed the appropriate protective order, consistent with the Commission’s COVID-19 response, as reflected in Order No. 20-088 and the Chief Administrative Law Judge’s (“ALJ”) letter dated March 26, 2020.

5. For a filing containing Highly Protected Information, a Highly Protected version and a public version of the document must be created and filed with the Filing Center. The Highly Protected versions of documents shall be grouped together and should be clearly marked as Highly Protected. The Commission’s Filing Center receives files electronically outside of the Huddle program. For discovery containing Highly Protected Information, the file should be uploaded to a Huddle file folder designated “Highly Protected.”

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 designation and provide written notice to the Commission and other parties.

Challenge to Designation of Highly Protected Information

8. A party may informally challenge any designation of Highly Protected Information by notifying the designating party. If any party objects to such designation by letter or email within five business days, the designating party must provide a written response to the party that describes in detail why the designated information is appropriately designated as Highly Protected Information. The burden resides with the designating party to show that the challenged information is covered by ORCP 36(C)(1) or exempt from disclosure under the Public Records Law. Once notified, the designating party bears the burden of showing that the challenged information is covered by the applicable definition in this Order. 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 filed with the ALJ must identify the information in dispute and include a certification that reasonable efforts to achieve an informal resolution have been unsuccessful. Within five days of the objection, unless otherwise ordered by the ALJ, the designating party must either remove the highly protected designation or file a written response identifying the factual and legal basis of how the challenged information is protected under the Oregon Public Records Act, ORS 192.311 *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 motion, the Commission will remove the highly protected designation from the challenged information.

10. 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

11. Only persons qualified to receive Highly Protected Information in accordance with Paragraphs 12-14 below (“HC Qualified Persons”) may access Highly Protected Information designated by another party under this Modified Protective Order.

12. Persons automatically bound by this Modified Protective Order 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 signing the Consent to be Bound section of Appendix B are:

- (a) Counsel for a party;
- (b) Any person employed directly by counsel of record; and
- (c) An employee or counsel of the Citizens’ Utility Board of Oregon.

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 HC 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 Protected Information by having each such person complete and sign Appendix C and submitting the Appendix to the designating party and to the Commission. Within 5 business days of receiving a signed copy of Appendix C, the designating party either must provide access to the requested Highly Protected Information to the person who signed Appendix C or must file an objection under Paragraph 15.

Objection to Access to Highly Protected Information

15. All HC Qualified Persons 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 HC Qualified Person, the designating party must provide the HC Qualified Person and his or her counsel written notice stating the basis for the objection. The parties must promptly confer and attempt to resolve the dispute on an informal basis before requesting review by an ALJ. After receipt of the written notice of objection required by this paragraph, the specific Highly Protected Information may not be disclosed to the HC Qualified Person until the issue is resolved.

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.

Preservation of Confidentiality

17. All HC Qualified Persons must take reasonable precautions to keep Highly Protected Information secure. A HC Qualified Person may reproduce Highly Protected Information to the extent necessary to participate in these proceedings. A HC Qualified Person may discuss Highly Protected Information obtained under this order only with other HC Qualified Persons who have obtained the same information. Disclosure of Highly Protected Information for purposes of business competition is strictly prohibited.

18. Without the written permission of the designating party, any person given access to Highly Protected Information under this order may not use or disclose such information for any purpose other than participation in this proceeding.

19. A Party wishing to utilize knowledge of Highly Protected Information obtained in this docket for purposes of a subsequent proceeding must submit new data requests for the same information to the utility in the subsequent proceeding, under protective orders applicable to the subsequent proceeding and subject to the discovery rules then applicable for disclosure of Highly Protected Information.

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. The information retained may not be disclosed to any

person. Any other person retaining Highly Protected Information at the conclusion of this proceeding must return it to the designating party within 90 days after final resolution of these proceedings or must destroy the Highly Protected Information and provide an affidavit to the designating party swearing that the Highly Protected Information has been destroyed. 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 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 Highly Protected Information.

APPENDIX B
CONSENT TO BE BOUND
PCN 6

I. Consent to be Bound:

This Modified Protective Order and Appendix B governs the use of Highly Protected Information in these proceedings.

 (“Party”) agrees to be bound by the terms of the Modified Protective Order and certifies that it has an interest in this proceeding that is not adequately represented by other parties to the proceedings.

Signature: _____

Printed Name: _____

Date: _____

II. Persons Qualified under Paragraph 13:

I have read the Modified Protective Order and agree to be bound by its terms.

I certify that:

- a. I agree to keep the information in a secure manner as required by the Commission’s rules and destroy it at the conclusion of this proceeding as required by Paragraph 20.
- b. 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.
- c. The party with which I am associated has a legitimate and non-competitive need for the Highly Protected Information 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: _____

APPENDIX B
CONSENT TO BE BOUND
PCN 6

By: Signature: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

Date: _____

By: Signature: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

Date: _____

By: Signature: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

Date: _____

By: Signature: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

Date: _____

By: Signature: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

Date: _____

By: Signature: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

Date: _____

APPENDIX C

Signatory Page for Other Persons Seeking Qualification to Access Information Under Paragraph 14 PCN 6

Persons Seeking Qualification Pursuant to Paragraph 14.

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

I certify that:

- a. I agree to keep the information in a secure manner as required by the Commission's rules and destroy it at the conclusion of this proceeding as required by Paragraph 20.
- b. 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.
- c. I or the party with which I am associated has a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information.

By: Signature: _____ Date: _____

Printed Name: _____

Address: _____

Employer: _____

Associated Party (if applicable): _____

Job Title: _____

If not an employee of a party, describe practice and clients:
