



SUZANNE PRINSEN
Direct (503) 595-3927
suzanne@mrg-law.com

January 10, 2023

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Filing Center
P.O. Box 1088
201 High Street S.E., Suite 100
Salem, OR 97308-1088

Re: Docket No. PCN 5 – In the Matter of Idaho Power Company’s Petition for Certificate of Public Convenience and Necessity.

Attention Filing Center:

Attached for filing in the above-referenced docket is Idaho Power Company’s Motion for Modified Protective Order, Expedited Consideration Requested.

Please contact this office with any questions.

Thank you,

Suzanne Prinsen
Legal Assistant

Attachments

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 5

In the Matter of

IDAHO POWER COMPANY

PETITION FOR CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY.

MOTION FOR MODIFIED PROTECTIVE
ORDER

Expedited Consideration Requested

1 **I. INTRODUCTION**

2 Pursuant to OAR 860-001-0420 and OAR 860-001-0080(3), Idaho Power Company
3 (“Idaho Power” or “Company”) moves the Public Utility Commission of Oregon (“Commission”)
4 for entry of a Modified Protective Order to supplement the Commission’s General Protective
5 Order¹ in this proceeding. Specifically, Idaho Power requests the Administrative Law Judge
6 (ALJ) issue the Modified Protective Order attached as Appendix A to this motion. The General
7 Protective Order only governs Protected Information, and a Modified Protective Order would
8 provide additional protection for Highly Confidential Information, including Critical Energy
9 Infrastructure Information (“CEII”). Idaho Power requests expedited consideration of this motion
10 in order to provide Highly Confidential Information in its responses to the Staff of the Public Utility
11 Commission’s (“Staff”) discovery requests and future discovery that may be requested in this
12 proceeding.

13 **II. BACKGROUND**

14 On August 26, 2022, the ALJ granted Protective Order No. 22-309 in this proceeding.
15 On September 30, 2022, Idaho Power filed a Petition for Certificate of Public Convenience and
16 Necessity. Staff then issued a discovery request to Idaho Power which seeks information that

¹ See Order No. 22-309.

1 Idaho Power regards as Highly Confidential Information, requesting detailed one-line diagrams
2 for all substations that will be part of, or interconnect with the Boardman to Hemingway
3 Transmission Line (“B2H”) project.² With a Modified Protective Order in place, Idaho Power will
4 be able to respond quickly to Staff’s pending discovery request and future discovery requests in
5 this proceeding.

6 **III. REQUEST FOR ADDITIONAL PROTECTION**

7 The Commission’s rules in OAR 860-001-0080(3) establish the requirements for seeking
8 a modified protective order. This motion addresses each of these requirements in the following
9 subsections.

10 **A. Parties and Exact Nature of the Information Involved (OAR 860-001-0080(3)(a)(A)).**

11 At the time of filing this motion, the parties to this case are Idaho Power, Staff, the STOP
12 B2H Coalition (“STOP B2H”), PacifiCorp d/b/a Pacific Power (“PacifiCorp”), 7JB Living Trust,
13 Whitetail Forest LLC, Owyhee Oasis, FSK Energy, Morton Cattle & Hay, Generation Farm
14 Company, Greg Larkin, Margie Marie Lyon, and John Williams. This proceeding will implicate
15 Highly Confidential Information related to Idaho Power’s transmission resources, including CEII,
16 as noted above in Staff’s request for diagrams of the Company’s critical infrastructure. Public
17 disclosure of this information would harm Idaho Power and its customers by risking the security
18 of the Company’s critical infrastructure. Other Highly Confidential Information may also be
19 requested by parties in discovery during the course of this proceeding. Idaho Power will be able
20 to expedite its response to discovery with a Modified Protective Order in place.

² Staff’s Data Request No. 78 issued in Docket PCN 5.

1 **B. *Legal Basis for the Claim that the Information is Protected under Public Records***
2 ***Law (OAR 860-001-0080(3)(a)(B)).***

3 The CEII at issue in this proceeding is prohibited from disclosure by federal regulations
4 and is therefore exempted from disclosure under Oregon’s Public Records Law.³ CEII is a type
5 of Highly Confidential Information because it includes specific engineering or detailed design
6 information regarding proposed or existing critical energy infrastructure that relates to the
7 transmission or distribution of energy.⁴ Such information is highly confidential because
8 disclosure absent the Modified Protective Order would negatively affect the security of the
9 transmission system and public health or safety.

10 Additionally, though not implicated in the Data Requests that have been issued to date,
11 Idaho Power anticipates that commercially sensitive information may be requested through
12 discovery, and proposes that the Modified Protective Order should also be broad enough to
13 protect commercially sensitive information consistent with ORCP 36(C)(1).⁵ It is efficient to
14 include both categories of information in the Modified Protected Order so that Idaho Power will
15 be able to promptly share such information in the event that additional discovery served in this
16 case seeks to obtain commercially sensitive information.

17 **C. *Exact Nature of the Relief Requested (OAR 860-001-0080(3)(a)(C)).***

18 The Company requests that the Commission enter the attached Modified Protective
19 Order in Appendix A. The Modified Protective Order will protect the Highly Confidential
20 Information by limiting access to Staff and its counsel and counsel for other parties in this docket
21 that execute the Modified Protective Order. Paragraph 14 of Appendix A outlines a process for

³ ORS 192.355(8).

⁴ See 18 CFR § 388.113(c)(2).

⁵ ORCP 36(C)(1) provides protection against unrestricted discovery of “trade secret[s] or other confidential research, development, or commercial information.”

1 additional parties (such as consultants) to seek access to Highly Confidential Information on a
2 case-by-case basis. The Commission and the ALJ assisting the Commission would also have
3 access to Highly Confidential Information.

4 The proposed Modified Protective Order also requires that Highly Confidential
5 Information, including CEII, be maintained in a manner distinct and more restrictive than that
6 classified as either non-confidential information or Protected Information. Previously, Highly
7 Confidential Information was printed on a color of paper that distinguished it from Protected
8 Information and public information. Like Protected Information, Highly Confidential Information
9 must be stored in a locked room or cabinet, and Highly Confidential Information may not be used
10 or disclosed for any purpose other than participation in this proceeding. However, the Chief ALJ
11 outlined new measures for handling confidential information stating that until and unless the
12 Commission's Filing Center changes the process, confidential information will be received and
13 distributed electronically, consistent with the Agency's COVID-19 response as reflected in Order
14 No. 20-088.

15 Idaho Power requests that the Commission enter the proposed Modified Protective Order
16 that is included in this Motion as Appendix A. The terms of the Modified Protective Order are
17 narrowly tailored and intended to apply only to Idaho Power's most sensitive information. The
18 proposed Modified Protective Order will allow the transmission of such information to the parties
19 that sign the Modified Protective Order. By identifying specific individuals qualified to access
20 Highly Confidential Information, the parties to the Modified Protective Order will have certainty
21 regarding the permissible, but limited, disclosure of Highly Confidential Information.

22 ***D. Specific Reasons the Relief Requested is Necessary (OAR 860-001-0080(3)(a)(D)).***

23 The requested Modified Protective Order will protect against widespread disclosure of
24 sensitive information that is protectable under law while enabling Idaho Power to make

1 information available consistent with the highly sensitive nature of the information. The goal of
2 Idaho Power's proposed protections is to minimize the number of persons who have access to
3 the Highly Confidential Information and to reduce the likelihood of public disclosure.

4 Idaho Power asks that the Highly Confidential Information, including the CEII already
5 requested by Staff, be made available only to Staff and its counsel and counsel for other parties
6 in this docket that execute the Modified Protective Order. This approach will strike a balance,
7 ensuring that Staff, the party charged by the legislature with protecting the public and customer
8 interests has an opportunity to fully vet information such as technical drawings of Idaho Power's
9 infrastructure (as well as counsel or consultants for other parties that execute the Modified
10 Protective Order), while at the same time providing Idaho Power with the ability to protect the
11 integrity of its CEII.

12 The additional protection provided by the Modified Protective Order will allow the parties
13 access to the information in a manner that protects highly sensitive information. The requested
14 Modified Protective Order will also help reduce the risk of an inadvertent disclosure of the Highly
15 Confidential Information. The General Protective Order is insufficient as it is general in nature
16 and does not have adequate safeguards to protect Highly Confidential Information, including the
17 CEII requested by Staff.

18 ***E. Description of the Intermediate Measures Explored by the Parties (OAR 860-001-***
19 ***0080(3)(a)(E).***

20 The standard protective order will be insufficient to protect Idaho Power's Highly
21 Confidential Information and CEII. Intermediate measures have not been taken as Idaho Power
22 is making this motion as a proactive step that will facilitate discovery. As explained above, it is
23 necessary to limit access to specific Highly Confidential Information to protect among other
24 things, Idaho Power's CEII.

1 **F. Certification of Conferring with Parties (OAR 860-001-0080(3)(a)(F)).**

2 Idaho Power provided a draft of the Motion and proposed Modified Protective Order on
3 January 5, 2023 to the parties who have intervened in this proceeding as listed above. At the
4 time of filing, Staff and PacifiCorp indicated that they do not oppose this Motion, STOP B2H
5 represented that it was opposed to this Motion, and no other party stated its position.

6 **G. Good Cause Justifies Expedited Consideration of this Motion.**

7 Staff requested the information at issue requiring Highly Confidential treatment through
8 discovery that was due on December 30, 2022. Staff's Opening Testimony in this proceeding is
9 due on January 17, 2023. To ensure that the discovery responses containing Highly Confidential
10 Information can be provided promptly to Staff, Idaho Power respectfully requests that this Motion
11 be considered on an expedited basis.

12 **IV. CONCLUSION**

13 For the foregoing reasons, Idaho Power respectfully requests that the Commission issue
14 a Modified Protective Order in the format provided as Appendix A to this Motion for the purposes
15 of Docket PCN 5.

DATED: January 10, 2023

McDOWELL RACKNER GIBSON PC



Jocelyn Pease
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
jocelyn@mrq-law.com

IDAHO POWER COMPANY
Donovan Walker
Lead Counsel
P.O. Box 70
Boise, Idaho 83707
dwalker@idahopower.com

Attorneys for Idaho Power Company

Appendix A

to

Motion for Modified Protective Order

in Docket No. PCN 5

MODIFIED PROTECTIVE ORDER
PCN 5

Scope of this Order

1. This order supplements General Protective Order No. 22-309 and governs the acquisition and use of “Highly Confidential Information” produced or used by any party to Docket PCN 5.

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 ORS 192.355(8) (exempt from disclosure under Oregon Public Records Law) 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 Confidential Information, a party must place the following legend on the material:

HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO
MODIFIED PROTECTIVE 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. Until and unless the OPUC Filing Center changes the process, all Highly Confidential Information in Docket PCN 5 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 Confidential. 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 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 designation and provide written notice to the Commission and other parties.

Challenge to Designation of Highly Confidential Information

8. A party may informally challenge any designation of Highly Confidential 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 Confidential 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 confidential 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 confidential 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 Confidential Information

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

12. Persons automatically bound by this Modified Protective Order 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 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 of the Regulatory Division at the Oregon Citizens’ Utility Board.

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 Confidential 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 Confidential Information to the person who signed Appendix C or must file an objection under Paragraph 15.

Objection to Access to Highly Confidential Information

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

18. Without the written permission of the designating party, any person given access to Highly Confidential 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 Confidential 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 Confidential Information.

20. 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. The information retained may not be disclosed to any person. Any other person retaining Highly Confidential 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 Confidential Information and provide an affidavit to the designating party swearing that the Highly Confidential 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 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 Highly Confidential Information.

**APPENDIX B
CONSENT TO BE BOUND
PCN 5**

I. Consent to be Bound:

This Modified Protective Order and Appendix B governs the use of Highly Confidential 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 Confidential 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: _____

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: _____

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

APPENDIX C

Signatory Page for Other Persons Seeking Qualification to Access Information Under Paragraph 14 PCN 5

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 Confidential 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:

DOCKET PCN 5 - CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2023 Idaho Power Company's Motion for Modified Protective Order was served by USPS First Class Mail to said person(s) at his or her last-known address(es) as indicated below:

By: USPS First Class Mail:

John C. Williams
PO Box 1384
La Grande, OR 97850

DATED: January 10, 2023

/s/ Suzanne Prinsen

Suzanne Prinsen
Legal Assistant