

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 **UM 1121**

4  
5 In the Matter of the Application of OREGON  
6 ELECTRIC UTILITY COMPANY, LLC,  
7 TPG PARTNERS III, L.P.,  
8 TPG PARTNERS IV, L.P., MANAGING  
9 MEMBER LLC, NEIL GOLDSCHMIDT,  
10 GERALD GRINSTEIN and TOM WALSH, for  
an Order Authorizing Oregon Electric Utility  
Company, LLC, to Acquire Portland General  
Electric Company

**MOTION FOR MODIFIED PROTECTIVE  
ORDER**

11 On March 8, 2004, Applicants Oregon Electric Utility Company, LLC, TPG Partners III,  
12 L.P., TPG Partners IV, L.P., Managing Member LLC, Neil Goldschmidt, Gerald Grinstein, and  
13 Tom Walsh (collectively, "Applicants") filed a Motion for Protective Order with the Public  
14 Utility Commission in connection with their application to acquire Portland General Electric. On  
15 March 10, 2004, the Administrative Law Judge ("ALJ") issued a Standard Protective Order,  
16 reserving consideration of Applicants' motion for a Modified Protective Order until after the  
17 March 16, 2004 prehearing conference. Applicants now renew their motion for a Modified  
18 Protective Order.

19 **MOTION**

20 Applicants hereby move for an Modified Protective Order, attached as Exhibit 1, for  
21 purposes of (1) designating an additional level of confidentiality that Applicants believe is  
22 necessary in this proceeding, and (2) further protecting computerized records and software. A  
23 blackline version of the Commission's Standard Protective Order highlighting the changes  
24 reflected in the Modified Protective Order is attached as Exhibit 2.

25 //

26 //

1                                   **AUTHORITY FOR MODIFIED PROTECTIVE ORDER**

2           OAR 860-012-0035(1)(k) provides that, for good cause shown, the ALJ has authority to  
3 issue a protective order, “which may include language agreed upon by all parties to a proceeding  
4 and the ALJ, to limit disclosure of confidential information.”

5                                   **GOOD CAUSE SHOWING**

6           Oregon law expressly exempts trade secrets and confidential competitive information  
7 from disclosure to the public. *See* ORS 192.501(2). The proposed Modified Protective Order is  
8 an effort to balance Applicants’ legitimate need and legal right to confidentiality against Staff’s  
9 and Intervenors’ need to fully investigate this transaction. Applicants’ goal is to provide Staff  
10 and Intervenors with reasonable access to highly confidential information, while at the same time  
11 placing a reasonable safeguard against the risk of disclosure to present or future competitors.

12           Over 25 parties have filed motions to intervene in this docket, and Applicants anticipate  
13 that more will follow. The discovery process involves numerous requests for disclosure of  
14 sensitive and proprietary trade secret information, such as Applicants’ acquisition strategy,  
15 financial models, valuation methods, investment returns, proprietary information of third parties,  
16 and exploratory discussions of personnel matters. Applicants derive significant economic value  
17 from such information not being generally known to the public, which includes the many parties  
18 that have intervened and will continue to intervene in this proceeding.

19           Although the Standard Protective Order entered in this case provides some protection, the  
20 large number of Intervenors alone substantially increases the risk that Applicants’ trade secret  
21 and commercially competitive information could be obtained and used in a manner that would  
22 work a clearly defined and serious injury to Applicants’ businesses. By creating an additional  
23 level of confidentiality for “Highly Confidential Information” that would be disclosed only to  
24 parties’ legal counsel and, at most, one consultant, the Modified Protective Order will allow  
25 meaningful review of that information, while at the same time providing Applicants with the  
26 protection of its trade secrets and confidential competitive information that is contemplated

1 under Oregon law.<sup>1</sup> Notably, the Commission has modified Standard Protective Orders to  
2 include a “Highly Confidential Information” designation in the past. *See, e.g., In the Matter of*  
3 *the Investigation to Determine, Pursuant to Order of the Federal Communications Commission,*  
4 *Whether Impairment Exists in Particular Markets if Local Circuit Switching for Mass Market*  
5 *Customers Is No Longer Available as an Unbundled Network Element*, UM 1100, Order No. 03-  
6 744 (Dec. 17, 2003).

### 7 INFORMATION TO BE PROTECTED

#### 8 A. Highly Confidential Information

9 As noted, certain information requested by Commission Staff and other interested parties  
10 will include highly sensitive information, the disclosure of which will result in harm to  
11 Applicants’ businesses. In particular, information related to Applicants’ acquisition strategy,  
12 valuation methods, financial models, and investment returns are extremely valuable  
13 commercially. Assurance of strict confidentiality is essential to the ability of the Applicants and  
14 their professional advisors to provide comprehensive and candid analysis of merger and  
15 acquisition transactions, and for the investors involved to provide information to Applicants.  
16 Release of that information to the public would work a clearly defined and serious injury to  
17 Applicants’ future ability to compete with other private equity funds in attracting investors and  
18 financing for acquisitions. In addition, certain information requested by Staff concerns highly  
19 sensitive personnel information, which would cause embarrassment if made widely available.  
20 Applicants therefore propose to modify the Standard Protective Order to allow such information  
21 to be designated “Highly Confidential Information.”

22 Specifically, Applicants propose the following provision defining “Highly Confidential  
23 Information” be included in the Modified Protective Order:  
24

---

25 <sup>1</sup> Applicants made “Extremely Confidential Information” available to the Commission Staff in response to  
26 Staff’s data requests. Applicants are willing to work with intervenors to agree upon redacted or otherwise modified  
versions of that information so that it can be produced under the proposed Modified Protective Order as “Highly  
Confidential Information.”



1 consultant, legal or otherwise, to receive and review materials stamped "Highly  
2 Confidential." In addition to executing the Agreement required by this Protective  
3 Order for "Confidential Information," each person so designated as legal counsel  
4 or consultant for review of Highly Confidential documents or information must  
5 execute a Highly Confidential Information Agreement, in the form prescribed by  
6 Appendix C of this Order, certifying that they have read and understand, and  
7 agree to be bound by, the terms of the Protective Order in this proceeding,  
8 including this Section of the Protective Order.

9 Any party may object in writing to the designation of any individual  
10 counsel or consultant as a person who may review Highly Confidential documents  
11 or information. Any such objection must demonstrate good cause, supported by  
12 affidavit, to exclude the challenged counsel or consultant from the review of  
13 Highly Confidential documents or information. Written response to any objection  
14 must be filed with the Commission within five days after receipt of the objection.  
15 If, after receiving a written response to a party's objection, the objecting party still  
16 objects to disclosure of the Highly Confidential Information to the challenged  
17 individual, the Commission shall determine whether the Highly Confidential  
18 Information must be disclosed to the challenged individual.

19 Designated legal counsel will maintain the Highly Confidential documents  
20 and information and any notes reflecting their contents in a secure location to  
21 which only designated counsel has access. No additional copies will be made,  
22 EXCEPT FOR USE DURING HEARING AND THEN SUCH COPIES SHALL  
23 ALSO BE SUBJECT TO THE PROVISIONS OF THIS ORDER. If another  
24 person is designated for review, that individual must not remove the Highly  
25 Confidential documents or information, or any notes reflecting their contents,  
26 from the secure location. Any testimony or exhibits prepared that include or  
reflect Highly Confidential Information must be maintained in the secure location  
until filed with the Commission or removed to the hearing room for production  
under seal and under circumstances that will ensure continued protection from  
disclosure to persons not entitled to review Highly Confidential documents or  
information. Counsel will provide prior notice (at least one business day) of any  
intention to introduce such material at hearing, or refer to such materials in cross-  
examination of a witness. The presiding officer will determine the process for  
including such documents or information following consultation with the parties.

The designation of any document or information as Highly Confidential  
may be challenged by motion and the classification of the document or  
information as Highly Confidential will be considered in chambers by the ALJ.  
The party contending that a document or information is Highly Confidential bears  
the burden of proving that such designation is necessary.

At the conclusion of this proceeding, and the exhaustion of any rights to  
appeal, designated legal counsel must return all Highly Confidential documents  
and information provided during the course of the proceeding, and must certify in

1 writing that all notes taken and any records made regarding Highly Confidential  
2 documents and information have been destroyed by shredding or incineration.

3 Highly Confidential documents and information will be provided to Staff  
4 and Public Counsel under the same terms and conditions of this Protective Order  
5 as govern the treatment of Confidential Information provided to Commission  
6 Staff and Public Counsel and as otherwise provided by the terms of the Protective  
7 Order other than this Section.

8 The Modified Protective Order will include, in addition to the Signatory Page for  
9 “Confidential Information,” a “Highly Confidential Information Agreement” attached as  
10 Appendix C to the order, which would be used to designate counsel and consultants as qualified  
11 persons for purposes of receiving “Highly Confidential Information.”

12 When possible, Applicants’ propose providing redacted copies of “Highly Confidential”  
13 documents in order to permit the widest range of Qualified Persons to receive such information.  
14 Nothing in this motion precludes Applicants from seeking additional protection for information  
15 pursuant to paragraph 25 of the Modified Protective Order.

16 B. Computer Software

17 Applicants request that the following provision relating to computerized data be added to  
18 the Standard Protective Order:

19 Any physical media containing computer software which are  
20 delivered to a party and which are designated confidential shall be  
21 returned to the party designating it confidential at the conclusion of  
22 the proceeding. The party returning the media shall sign a  
23 certificate affirming that the programming on the media has been  
24 erased from any storage facility internal to that party’s own  
25 computer facilities.

26 This provision will specifically protect against unauthorized copying of computerized  
27 data and protect proprietary information belonging to third parties.

28 //  
29 //  
30 //  
31 //

1 **CONCLUSION**

2 For the foregoing reasons, Applicants respectively request the entry of the attached  
3 Modified Protective Order with the addition of the provisions relating to (1) "Highly  
4 Confidential Information", and (2) computer data and software.

5 Dated: April 8, 2004.

6 Respectfully submitted,

7  
8 ATER WYNNE LLP

9 By: 

10 Lisa Rackner, OSB No. 87384

11 [lfr@aterwynne.com](mailto:lfr@aterwynne.com)

12 Kirk Gibson, OSB No. 85122

13 [khg@aterwynne.com](mailto:khg@aterwynne.com)

14 Ater Wynne LLP

15 222 SW Columbia Street, Suite 1800

16 Portland, OR 97201-6618

17 Telephone: (503) 226-1191

18 Of Attorneys for Applicants

**MODIFIED PROTECTIVE ORDER**  
DOCKET NO. UM 1121

**Scope of this Order-**

1. This order governs the acquisition and use of “Confidential Information” and “Highly Confidential Information” in this proceeding.

**Definitions-**

2. “Confidential Information” is information that falls within the scope of ORCP 36(C)(7) (“a trade secret or other confidential research, development, or commercial information”).

3. “Highly Confidential Information” is information that falls within the definition of “Confidential Information,” and furthermore is likely to cause harm to the party providing the information if released to parties and/or their employees other than legal counsel and, at most, one consultant. Except as otherwise noted, the rules governing the treatment of Confidential Information described herein also apply to Highly Confidential Information.

4. A “Qualified Person” is an individual who is:

- (a) An author(s), addressee(s), or originator(s) of the Confidential Information;
- (b) A Commissioner or Commission staff;
- (c) Counsel of record for a party;
- (d) A person employed directly by counsel of record; or
- (e) A person qualified pursuant to paragraph 10. This includes parties and their employees.

**Designation of Confidential Information-**

5. A party providing Confidential Information shall inform other parties that the material has been designated confidential by placing the following legend on the information:

CONFIDENTIAL  
SUBJECT TO PROTECTIVE ORDER

To the extent practicable, the party shall designate as confidential only those portions of the document that fall within ORCP 36(C)(7).

6. A party may designate as confidential any information previously provided by giving written notice to the other parties. Parties in possession of newly designated Confidential



Information shall, when feasible, ensure that all copies of the information bear the above legend to the extent requested by the party desiring confidentiality.

**Information Given to the Commission-**

7. Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on yellow paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies each separately sealed shall be provided to the Commission. **Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container.** The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER NO.  
\_\_\_\_\_ AND CONTAINS CONFIDENTIAL INFORMATION.  
THE INFORMATION MAY BE SHOWN ONLY TO  
QUALIFIED PERSONS AS DEFINED IN THE ORDER.

The Commission's Administrative Hearings Division shall store the Confidential Information in a locked cabinet dedicated to the storage of confidential information.

**Disclosure of Confidential Information-**

8. Parties desiring receipt of Confidential Information shall sign the Consent to be Bound Form attached as Appendix B. This requirement does not apply to the Commission Staff. Confidential Information shall not be disclosed to any person other than a "Qualified Person," as defined in paragraph 4. When feasible, Confidential Information shall be delivered to counsel. In the alternative, Confidential Information may be made available for inspection and review by qualified persons in a place and time agreeable to the parties or as directed by the Administrative Law Judge.

9. Qualified Persons may disclose Confidential Information to any other Qualified Person, unless the party desiring confidentiality protests as provided in Section 11.

10. To become a Qualified Person under paragraph 4(e), a person must:

- (a) Read a copy of this Protective Order;
- (b) Execute a statement acknowledging that the order has been read and agreeing to be bound by the terms of the order;
- (c) Date the statement;
- (d) Provide a name, address, employer, and job title; and
- (e) If the person is a consultant or advisor for a party, provide a description of the nature of the person's consulting or advising practice, including the identity of his/her current, past, and expected clients.

Counsel shall deliver a copy of the signed statement including the information in (d) and (e) above to the party desiring confidentiality and to all parties of record. Such notification may be made via e-mail or facsimile. A person qualified under paragraph 4(e) shall not have access to Confidential Information sooner than five (5) business days after receipt of a copy of the signed statement including the information in (d) and (e) above by the party desiring confidentiality.

11. All Qualified Persons shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The party desiring to restrict the qualified person(s) from accessing specific Confidential Information must provide written notice to the qualified person(s) and counsel for the party associated with the qualified person(s) as soon as the party becomes aware of reasons to restrict access. The parties must promptly confer and attempt to resolve any dispute over access to Confidential Information on an informal basis before filing a motion with the Administrative Law Judge. If the dispute cannot be resolved informally, either party may file a motion with the Administrative Law Judge for resolution. Either party may also file a motion if the other party does not respond within five days to a request to resolve the dispute. A motion must describe in detail the intermediate measures, including selected redaction, explored by the parties and explain why such measures do not resolve the dispute. After receipt of the written notice as required in this paragraph, the specific Confidential Information shall not be disclosed to the qualified person(s) until the issue is resolved.

#### **Preservation of Confidentiality-**

12. All persons who are given access to any Confidential Information by reason of this order shall not use or disclose the Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the Confidential Information secure. Disclosure of Confidential Information for purposes of business competition is strictly prohibited.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce Confidential Information to the extent necessary for the preparation and conduct of this proceeding. Qualified persons may disclose Confidential Information only to other qualified persons associated with the same party.

#### **Duration of Protection-**

13. The Commission shall preserve the confidentiality of all Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of confidential information.

#### **Destruction after Proceeding-**

14. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Confidential Information to the extent reasonably necessary to maintain a file of this proceeding 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 Confidential Information or documents containing such Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Confidential Information or documents containing such Confidential Information. This paragraph does not apply to the Commission or its Staff.

15. Any physical media containing computer software which are delivered to a party and which are designated Confidential shall be returned to the party designating it Confidential at the conclusion of the proceeding. The party returning the media shall sign a certificate affirming that the programming on the media has been erased from any storage facility internal to that party's own computer facilities.

#### **Appeal to the Presiding Officer-**

16. If a party disagrees with the designation of information as confidential, the party shall contact the designating party and attempt to resolve the dispute on an informal basis. If the parties are unable to resolve the dispute, the party desiring to use the information may move for exclusion of the information from the protection conferred by this order. The motion shall:

- (a) Specifically identify the contested information, and
- (b) Assert that the information does not fall within ORCP 36(C)(7) and state the reasons therefore.

The party resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the party resisting disclosure does not respond to the motion within ten (10) calendar days, the challenged information shall be removed from the protection of this order.

The information shall not be disclosed pending a ruling by the Administrative Law Judge on the motion.

#### **Highly Confidential Information-**

17. Information relevant to the resolution of this case is expected to include sensitive competitive information. Parties to this proceeding may receive discovery requests that call for the disclosure of highly confidential documents or information, the disclosure of which imposes a highly significant risk of competitive harm to the disclosing party. Parties may designate documents or information they consider to be Highly Confidential and such documents or information will be disclosed only in accordance with the provisions of this Section.

18. Parties must scrutinize carefully responsive documents and information and limit the amount they designate as Highly Confidential Information to only information that truly might impose a serious business risk if disseminated without the heightened protections provided in this Section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information shall bear the legend:

**HIGHLY CONFIDENTIAL**  
**USE RESTRICTED PER MODIFIED PROTECTIVE ORDER**  
**IN DOCKET UM 1121**

19. Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contains Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate where Highly Confidential Information is redacted. The unredacted versions of each page containing Highly Confidential Information and provided under seal also must be stamped “Highly Confidential” and submitted on light blue paper.

20. Qualified Persons for the purpose of Highly Confidential documents or information are only those persons identified in paragraph 4(a) and (b), above. Any other parties who seek access to or disclosure of Highly Confidential documents or information must designate legal counsel and no more than one consultant, legal or otherwise, to receive and review materials stamped “Highly Confidential.” In addition to executing the Agreement required by this Protective Order for “Confidential Information,” each person so designated as legal counsel or consultant for review of Highly Confidential documents or information must execute a Highly Confidential Information Agreement, in the form prescribed by Appendix C of this Order, certifying that they have read and understand, and agree to be bound by, the terms of the Protective Order in this proceeding, including this Section of the Protective Order.

21. Any party may object in writing to the designation of any individual counsel or consultant as a person who may review Highly Confidential documents or information. Any such objection must demonstrate good cause, supported by affidavit, to exclude the challenged counsel or consultant from the review of Highly Confidential documents or information. Written response to any objection must be filed with the Commission within five days after receipt of the objection. If, after receiving a written response to a party’s objection, the objecting party still objects to disclosure of the Highly Confidential Information to the challenged individual, the Commission shall determine whether the Highly Confidential Information must be disclosed to the challenged individual.

22. Designated legal counsel will maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel has access. No additional copies will be made, EXCEPT FOR USE DURING HEARING AND THEN SUCH COPIES SHALL ALSO BE SUBJECT TO THE PROVISIONS OF THIS ORDER. If another person is designated for review, that individual must not remove the Highly Confidential documents or information, or any notes reflecting their contents, from the secure location. Any testimony or exhibits prepared that include or reflect Highly Confidential Information must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing, or refer to such materials in cross-examination of a witness. The presiding officer will determine the process for including such documents or information following consultation with the parties.

23. The designation of any document or information as Highly Confidential may be challenged by motion and the classification of the document or information as Highly Confidential will be considered in chambers by the ALJ. The party contending that a document or information is Highly Confidential bears the burden of proving that such designation is necessary.

24. At the conclusion of this proceeding, and the exhaustion of any rights to appeal, designated legal counsel must return all Highly Confidential documents and information provided during the course of the proceeding, and must certify in writing that all notes taken and any records made regarding Highly Confidential documents and information have been destroyed by shredding or incineration.

Highly Confidential documents and information will be provided to Staff and Public Counsel under the same terms and conditions of this Protective Order as govern the treatment of Confidential Information provided to Commission Staff and Public Counsel and as otherwise provided by the terms of the Protective Order other than this Section.

**Additional Protection-**

25. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- (a) The parties and persons involved;
- (b) The exact nature of the information involved;
- (c) The exact nature of the relief requested;
- (d) The specific reasons the requested relief is necessary; and
- (e) A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if released, shall not be disclosed pending the Commission's ruling on the motion.

**SIGNATORY PAGE**

**I. Consent to be Bound-**

This Protective Order governs the use of "Confidential Information" in this proceeding.

\_\_\_\_\_ (Party) agrees to be bound by its terms of this Protective Order.

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

**II. Persons Qualified pursuant to Paragraphs 4(a) through 4(d).**

\_\_\_\_\_ (Party) identifies the following person(s) automatically qualified under paragraph 4(a) through (d).

_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date

**SIGNATORY PAGE**

**III. Persons Qualified pursuant to Paragraph 4(e) and Paragraph 10.**

I have read the Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 10.

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

**HIGHLY CONFIDENTIAL INFORMATION AGREEMENT  
CONCERNING HIGHLY CONFIDENTIAL INFORMATION  
IN DOCKET NO. UM 1121  
BEFORE THE  
OREGON PUBLIC UTILITY COMMISSION**

I, \_\_\_\_\_, as

- In-house counsel
- Outside counsel
- In-house consultant
- Outside consultant

in this proceeding for \_\_\_\_\_ (a party to this proceeding) in the subject matter area of \_\_\_\_\_ hereby agree to comply with and be bound by the Protective Order entered by the Oregon Public Utility Commission in Docket No. UM 1121 and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Permanent Address

\_\_\_\_\_  
Position and Responsibilities

\* \* \*

The following portion is to be completed by the responding party and filed with the Commission within 10 days of receipt. Failure to do so will constitute a waiver and the above-named person will be deemed a person having access to Highly Confidential Information under the terms and conditions of this Protective Order.

\_\_\_\_\_ No objection.

\_\_\_\_\_ Objection. The responding party objects to the above-named person having access to Highly Confidential Information. The objecting party shall file a motion with the Commission, supported by affidavit, setting forth the basis for objection and asking exclusion of the person from access to Highly Confidential Information.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**MODIFIED PROTECTIVE ORDER**  
DOCKET NO. UM 1121

**Scope of this Order-**

1. This order governs the acquisition and use of “Confidential Information” and “Highly Confidential Information” in this proceeding.

**Definitions-**

2. “Confidential Information” is information that falls within the scope of ORCP 36(C)(7) (“a trade secret or other confidential research, development, or commercial information”).

3. “Highly Confidential Information” is information that falls within the definition of “Confidential Information,” and furthermore is likely to cause harm to the party providing the information if released to parties and/or their employees other than legal counsel and, at most, one consultant. Except as otherwise noted, the rules governing the treatment of Confidential Information described herein also apply to Highly Confidential Information.

3-4. A “Qualified Person” is an individual who is:

- (a) An author(s), addressee(s), or originator(s) of the Confidential Information;
- (b) A Commissioner or Commission staff;
- (c) Counsel of record for a party;
- (d) A person employed directly by counsel of record; or
- (e) A person qualified pursuant to paragraph 10. This includes parties and their employees.

**Designation of Confidential Information-**

4-5. A party providing Confidential Information shall inform other parties that the material has been designated confidential by placing the following legend on the information:

CONFIDENTIAL  
SUBJECT TO PROTECTIVE ORDER

To the extent practicable, the party shall designate as confidential only those portions of the document that fall within ORCP 36(C)(7).

5-6. A party may designate as confidential any information previously provided by giving written notice to the other parties. Parties in possession of newly designated Confidential

Information shall, when feasible, ensure that all copies of the information bear the above legend to the extent requested by the party desiring confidentiality.

**Information Given to the Commission-**

6.5. Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on yellow paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies each separately sealed shall be provided to the Commission. **Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container.** The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER NO.  
\_\_\_\_\_ AND CONTAINS CONFIDENTIAL INFORMATION.  
THE INFORMATION MAY BE SHOWN ONLY TO  
QUALIFIED PERSONS AS DEFINED IN THE ORDER.

~~7.~~The Commission's Administrative Hearings Division shall store the Confidential Information in a locked cabinet dedicated to the storage of confidential information.

**Disclosure of Confidential Information-**

8.6. Parties desiring receipt of Confidential Information shall sign the Consent to be Bound Form attached as Appendix B. This requirement does not apply to the Commission Staff. Confidential Information shall not be disclosed to any person other than a "Qualified Person," as defined in paragraph 34. When feasible, Confidential Information shall be delivered to counsel. In the alternative, Confidential Information may be made available for inspection and review by qualified persons in a place and time agreeable to the parties or as directed by the Administrative Law Judge.

9.7. Qualified Persons may disclose Confidential Information to any other Qualified Person, unless the party desiring confidentiality protests as provided in Section 11.

10.8. To become a Qualified Person under paragraph 34(e), a person must:

- (a) Read a copy of this Protective Order;
- (b) Execute a statement acknowledging that the order has been read and agreeing to be bound by the terms of the order;
- (c) Date the statement;
- (d) Provide a name, address, employer, and job title; and
- (e) If the person is a consultant or advisor for a party, provide a description of the nature of the person's consulting or advising practice, including the identity of his/her current, past, and expected clients.

Counsel shall deliver a copy of the signed statement including the information in (d) and (e) above to the party desiring confidentiality and to all parties of record. Such notification may be made via e-mail or facsimile. A person qualified under paragraph 34(e) shall not have access to Confidential Information sooner than five (5) business days after receipt of a copy of the signed statement including the information in (d) and (e) above by the party desiring confidentiality.

11.9. All Qualified Persons shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The party desiring to restrict the qualified person(s) from accessing specific Confidential Information must provide written notice to the qualified person(s) and counsel for the party associated with the qualified person(s) as soon as the party becomes aware of reasons to restrict access. The parties must promptly confer and attempt to resolve any dispute over access to Confidential Information on an informal basis before filing a motion with the Administrative Law Judge. If the dispute cannot be resolved informally, either party may file a motion with the Administrative Law Judge for resolution. Either party may also file a motion if the other party does not respond within five days to a request to resolve the dispute. A motion must describe in detail the intermediate measures, including selected redaction, explored by the parties and explain why such measures do not resolve the dispute. After receipt of the written notice as required in this paragraph, the specific Confidential Information shall not be disclosed to the qualified person(s) until the issue is resolved.

#### **Preservation of Confidentiality-**

12.10. All persons who are given access to any Confidential Information by reason of this order shall not use or disclose the Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the Confidential Information secure. Disclosure of Confidential Information for purposes of business competition is strictly prohibited.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce Confidential Information to the extent necessary for the preparation and conduct of this proceeding. Qualified persons may disclose Confidential Information only to other qualified persons associated with the same party.

#### **Duration of Protection-**

13.11. The Commission shall preserve the confidentiality of all Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of confidential information.

#### **Destruction after Proceeding-**

14.12. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Confidential Information to the extent reasonably necessary to maintain a file of this proceeding 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 Confidential Information or documents containing such Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Confidential Information or documents containing such Confidential Information. This paragraph does not apply to the Commission or its Staff.

13. Any physical media containing computer software which are delivered to a party and which are designated Confidential shall be returned to the party designating it Confidential at the conclusion of the proceeding. The party returning the media shall sign a certificate affirming that the programming on the media has been erased from any storage facility internal to that party's own computer facilities.

#### **Appeal to the Presiding Officer-**

15.14. If a party disagrees with the designation of information as confidential, the party shall contact the designating party and attempt to resolve the dispute on an informal basis. If the parties are unable to resolve the dispute, the party desiring to use the information may move for exclusion of the information from the protection conferred by this order. The motion shall:

- (a) Specifically identify the contested information, and
- (b) Assert that the information does not fall within ORCP 36(C)(7) and state the reasons therefore.

The party resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the party resisting disclosure does not respond to the motion within ten (10) calendar days, the challenged information shall be removed from the protection of this order.

The information shall not be disclosed pending a ruling by the Administrative Law Judge on the motion.

#### **Highly Confidential Information-**

15. Information relevant to the resolution of this case is expected to include sensitive competitive information. Parties to this proceeding may receive discovery requests that call for the disclosure of highly confidential documents or information, the disclosure of which imposes a highly significant risk of competitive harm to the disclosing party. Parties may designate documents or information they consider to be Highly Confidential and such documents or information will be disclosed only in accordance with the provisions of this Section.

16. Parties must scrutinize carefully responsive documents and information and limit the amount they designate as Highly Confidential Information to only information that truly might impose a serious business risk if disseminated without the heightened protections provided in this Section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information shall bear the legend:

**HIGHLY CONFIDENTIAL**

**USE RESTRICTED PER MODIFIED PROTECTIVE ORDER**  
**IN DOCKET UM 1121**

17. Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contains Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate where Highly Confidential Information is redacted. The unredacted versions of each page containing Highly Confidential Information and provided under seal also must be stamped “Highly Confidential” and submitted on light blue paper.

18. Qualified Persons for the purpose of Highly Confidential documents or information are only those persons identified in paragraph 4(a) and (b), above. Any other parties who seek access to or disclosure of Highly Confidential documents or information must designate legal counsel and no more than one consultant, legal or otherwise, to receive and review materials stamped “Highly Confidential.” In addition to executing the Agreement required by this Protective Order for “Confidential Information,” each person so designated as legal counsel or consultant for review of Highly Confidential documents or information must execute a Highly Confidential Information Agreement, in the form prescribed by Appendix C of this Order, certifying that they have read and understand, and agree to be bound by, the terms of the Protective Order in this proceeding, including this Section of the Protective Order.

19. Any party may object in writing to the designation of any individual counsel or consultant as a person who may review Highly Confidential documents or information. Any such objection must demonstrate good cause, supported by affidavit, to exclude the challenged counsel or consultant from the review of Highly Confidential documents or information. Written response to any objection must be filed with the Commission within five days after receipt of the objection. If, after receiving a written response to a party’s objection, the objecting party still objects to disclosure of the Highly Confidential Information to the challenged individual, the Commission shall determine whether the Highly Confidential Information must be disclosed to the challenged individual.

20. Designated legal counsel will maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel has access. No additional copies will be made, EXCEPT FOR USE DURING HEARING AND THEN SUCH COPIES SHALL ALSO BE SUBJECT TO THE PROVISIONS OF THIS ORDER. If another person is designated for review, that individual must not remove the Highly Confidential documents or information, or any notes reflecting their contents, from the secure location. Any testimony or exhibits prepared that include or reflect Highly Confidential Information must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing, or refer to such materials in cross-examination of a witness. The presiding officer will determine the process for including such documents or information following consultation with the parties.

21. The designation of any document or information as Highly Confidential may be challenged by motion and the classification of the document or information as Highly Confidential will be considered in chambers by the ALJ. The party contending that a document or information is Highly Confidential bears the burden of proving that such designation is necessary.

22. At the conclusion of this proceeding, and the exhaustion of any rights to appeal, designated legal counsel must return all Highly Confidential documents and information provided during the course of the proceeding, and must certify in writing that all notes taken and any records made regarding Highly Confidential documents and information have been destroyed by shredding or incineration.

Highly Confidential documents and information will be provided to Staff and Public Counsel under the same terms and conditions of this Protective Order as govern the treatment of Confidential Information provided to Commission Staff and Public Counsel and as otherwise provided by the terms of the Protective Order other than this Section.

**Additional Protection-**

16.23. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- (a) The parties and persons involved;
- (b) The exact nature of the information involved;
- (c) The exact nature of the relief requested;
- (d) The specific reasons the requested relief is necessary; and
- (e) A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if released, shall not be disclosed pending the Commission's ruling on the motion.

**SIGNATORY PAGE**

**I. Consent to be Bound-**

This Protective Order governs the use of "Confidential Information" in this proceeding.

\_\_\_\_\_ (Party) agrees to be bound by its terms of this Protective Order.

By: \_\_\_\_\_  
Signature & Printed Date  
\_\_\_\_\_

**II. Persons Qualified pursuant to Paragraphs 34(a) through 34(d).**

\_\_\_\_\_ (Party) identifies the following person(s) automatically qualified under paragraph 34(a) through (d).

_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date

**SIGNATORY PAGE**

**III. Persons Qualified pursuant to Paragraph 34(e) and Paragraph 10.**

I have read the Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 10.

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_



**HIGHLY CONFIDENTIAL INFORMATION AGREEMENT**  
**CONCERNING HIGHLY CONFIDENTIAL INFORMATION**  
**IN DOCKET NO. UM 1121**  
**BEFORE THE**  
**OREGON PUBLIC UTILITY COMMISSION**

\_\_\_\_\_, I, \_\_\_\_\_, as

- In-house counsel
- Outside counsel
- In-house consultant
- Outside consultant

in this proceeding for \_\_\_\_\_ (a party to this proceeding) in  
the subject matter area of \_\_\_\_\_ hereby agree to comply with and  
be bound by the Protective Order entered by the Oregon Public Utility Commission in  
Docket No. UM 1121 and acknowledge that I have reviewed the Protective Order and fully  
understand its terms and conditions.

\_\_\_\_\_  
Signature \_\_\_\_\_ Date

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Permanent Address \_\_\_\_\_ Position and Responsibilities

\* \* \*

The following portion is to be completed by the responding party and filed with the  
Commission within 10 days of receipt. Failure to do so will constitute a waiver and the  
above-named person will be deemed a person having access to Highly Confidential  
Information under the terms and conditions of this Protective Order.

\_\_\_\_\_ No objection.

\_\_\_\_\_ Objection. The responding party objects to the above-named person having  
access to Highly Confidential Information. The objecting party shall file a motion with the  
Commission, supported by affidavit, setting forth the basis for objection and asking  
exclusion of the person from access to Highly Confidential Information.

\_\_\_\_\_  
Signature \_\_\_\_\_ Date