

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM -

In the Matter of
Constellation NewEnergy, Inc.'s
2017 RPS Report

**CONSTELLATION NEWENERGY, INC.'S
MOTION FOR
A GENERAL PROTECTIVE ORDER
EXPEDITED CONSIDERATION REQUESTED**

1 Under ORCP 36(C)(7) and OAR 860-001-0080(1), Constellation NewEnergy, Inc.
2 (“CNE”) moves the Public Utility Commission of Oregon (Commission) for entry of a
3 general protective order in these proceedings. CNE filed its 2017 RPS Report on May 31,
4 2018. The filing included confidential information. CNE requests expedited consideration
5 of this motion in order to promptly provide to parties the confidential information in the
6 initial filing. Good cause exists to issue a protective order to protect commercially
7 sensitive and confidential business information related to CNE’s Filing.

8 The Commission's rules authorize CNE to seek reasonable restrictions on
9 discovery of trade secrets and other confidential business information.¹ The
10 Commission's general protective order is designed to allow the broadest possible
11 discovery consistent with the need to protect confidential information.² CNE's initial
12 filing in this case contains commercially sensitive pricing information, load information,
13 and confidential information regarding contracts for the purchase of RECs. CNE will be
14 exposed to competitive injury if it is forced to make unrestricted disclosure of its
15 confidential business information.

¹ See OAR 860 001-0000(1) (adopting the Oregon Rules of Civil Procedure), ORCP 36(C)(7)(providing protection against unrestricted discovery of “trade secrets or other confidential research development, or commercial information”). See also *In re Investigation into the Cost of Providing Telecommunication Service*, Docket UM 351, Order No. 91-500 (1991) recognizing that protective orders are a reasonable means to protect “the rights of a party to trade secrets and other confidential commercial information” and “to facilitate the communications of information between litigants”).

² OAR 860 001 0080(2)

1 It is also possible that the parties to these proceedings will seek to discover further
2 information held by CNE, including confidential business information.
3 Issuance of a protective order will facilitate the production of relevant information and
4 expedite the discovery process.

5 For these reasons, CNE respectfully requests that the Commission enter its
6 general protective order in this docket. CNE requests expedited consideration of this
7 motion to allow parties who execute the protective order to promptly obtain the
8 confidential information in the initial filing and responses to discovery requests.

DATED: May 31, 2018

A handwritten signature in blue ink, appearing to read "Lynda Fohn". The signature is fluid and cursive, with a large initial "L" and a stylized "F".

Lynda Fohn
Assistant General Counsel
On behalf of Constellation NewEnergy, Inc.

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DISPOSITION: MOTION FOR PROTECTIVE ORDER GRANTED

On May 31, 2018, Constellation NewEnergy, Inc. ("CNE") filed a motion for a general protective order with the Public Utility Commission of Oregon (Commission). CNE states that the order is needed to protect confidential customer information and confidential business plans and strategies. Specifically, CNE states that pricing information, load information, and REC contract information should be confidential. CNE adds that the public release of this information could prejudice CNE and its customers.

I find that good cause exists to issue a general protective order, which is attached as Appendix A. The order permits the broadest possible discovery consistent with the need to protect confidential information. It shields no specific documents and makes no judgment about whether any particular document contains a trade secret or commercially sensitive information. Rather, the order adopts a process for resolving discovery disputes that include sensitive information.

The order permits any party to designate information as confidential if the party reasonably believes that the information falls within the scope of ORCP 36(C)(7). The confidential designation must be made in good faith and be limited to only those portions of the document that qualify as a protected trade secret or other confidential research, development, or commercial information. Any other party may challenge the designation of information as confidential. The designating party bears the burden of showing that the challenged information is covered by ORCP 36(C)(7).

Confidential information may be disclosed only to a "qualified person" as defined in paragraph 3 of the general protective order. The authors of the confidential material, the Commission, Administrative Law Judges (ALJs), Commission Staff, and counsel of record for a party or persons directly employed by counsel are "qualified persons" and may review confidential information without individually signing the general protective order. Other persons wanting access to confidential information must become qualified under paragraph 10.

To receive confidential information, all parties except Commission Staff must

sign the “consent to be bound” in section I of Appendix B. This includes the party that moved for issuance of the general protective order because any party may designate information as confidential under the order. By signing the “consent to be bound,” a party agrees to be bound by the terms of the general protective order and certifies that it has an interest in the proceedings that is not adequately represented by other parties to the proceedings.

All persons given access to confidential information must monitor their own conduct to ensure compliance with the general protective order. Without the written permission of the designating party, no person may use or disclose the information for any purpose other than participating in these proceedings. All qualified persons must take reasonable precautions to keep confidential information secure. Questions regarding whether a particular person is a “qualified person” under the general protective order may be directed to the Administrative Hearings Division at (503) 378-6678.

ORDER

IT IS ORDERED that the General Protective Order, attached as Appendix A, governs the disclosure of confidential information in these proceedings.

Made, entered, and effective on _____ .

[Judge’s name]
Administrative Law Judge

A party may appeal this order to the Commission under OAR 860-001-0420.

GENERAL PROTECTIVE ORDER
DOCKET NO. []

Scope of this Order:

1. This order governs the acquisition and use of Confidential Information in these proceedings.

Definitions:

2. “Confidential Information” is information that falls within the scope of ORCP 3 6(C)(7) (“a trade secret or other confidential research, development, or commercial information”).

3. A “Qualified Person” is an individual who is:
- a. An author, addressee, or originator of Confidential Information;
 - b. A Commissioner, Administrative Law Judge (ALJ), or Commission Staff;
 - c. Counsel of record for a party;
 - d. A person employed directly by counsel of record; or
 - e. A person qualified under paragraph 10, including parties and their employees.

Designation of Confidential Information:

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

CONFIDENTIAL
SUBJECT TO GENERAL PROTECTIVE ORDER

To the extent practicable, the party may designate as confidential only the portions of the material covered by ORCP 36(C)(7).

5. 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 must, when feasible, ensure that all copies of the information bear the above legend if requested by the designating party.

6. Any other party may challenge the designation of information as confidential 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)(7).

Information Given to the Commission:

7. Confidential Information filed or provided to the Commission or its Staff must be printed on yellow paper and placed in a sealed envelope or other appropriate container. **Only the portions of a document that fall within ORCP 36(C)(7) may be placed in the envelope/container.** The envelope/container must bear the legend:

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

Disclosure of Confidential Information:

8. To receive Confidential Information, all parties except Commission Staff must sign the “consent to be bound” in section I of Appendix B. Confidential Information may not be disclosed to any person other than a Qualified Person. When feasible, Confidential Information must 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 ALJ.

9. A Qualified Person may disclose Confidential Information to any other Qualified Person associated with the same party, unless the designating party objects under paragraph 11.

10. To become a Qualified Person under paragraph 3(e), a person must:
- a. Read a copy of this general 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 current, past, and expected clients.

Counsel must deliver a copy of the signed statement including the information in (d) and (e) to the designating party and to all parties of record. The notification may be made by electronic mail or facsimile. A person qualified under paragraph 3(e) may not have access to Confidential Information sooner than seven days after the designating party receives a copy of the signed statement.

11. All Qualified Persons may have access to Confidential Information unless the designating party objects as provided in this paragraph. The designating party must provide written

notice to the Qualified Person and counsel for the party associated with the Qualified Person as soon as the designating 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 ALJ. After receipt of the written notice as required in this paragraph, the specific Confidential Information may not be disclosed to the Qualified Person until the issue is resolved.

Preservation of Confidentiality:

12. Without the written permission of the designating party, any person given access to Confidential Information under this order may not use or disclose Confidential Information for any purpose other than participating in these proceedings. All Qualified Persons must take reasonable precautions to keep Confidential Information secure. Disclosure of Confidential Information for purposes of business competition is strictly prohibited.

A Qualified Person may reproduce Confidential Information to the extent necessary to participate in these proceedings. A Qualified Person may disclose Confidential Information only to other Qualified Persons associated with the same party.

Duration of Protection:

13. The Commission will preserve the confidentiality of 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 Confidential Information.

Destruction After Proceedings:

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 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 Confidential 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 Confidential Information. This paragraph does not apply to the Commission or its Staff.

Appeal to the Presiding Officer:

15. Any party may request that the ALJ conduct a conference to help resolve disputes related to this protective order.

A party challenging the designation of information as confidential may file an objection with the ALJ that identifies the information in dispute and includes a certification that reasonable efforts to achieve an informal resolution have been unsuccessful. Within seven days of the objection, unless otherwise ordered by the ALJ, the designating party must

either remove the confidential designation or file a written response identifying the legal basis for the claim of confidentiality. The challenging party may file a written reply to any response within seven days. If the designating party does not timely respond to the motion, the Commission will remove the confidential designation from the challenged information.

Additional Protection:

16. If a designating party seeks additional protection for Confidential Information, the party may move for any of the remedies in ORCP 3 6(C). The motion must include:

- a. The parties involved;
- b. The exact nature of the information involved;
- c. The legal basis for the claim that the information is protected under ORCP 36(C)(7) or the Public Records Law;
- d. The exact nature of the relief requested;
- e. The specific reasons the requested relief is necessary; and
- f. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why these measures are insufficient.

Pending the Commission's ruling on a motion for additional protection, the information involved need not be released.

III. Persons Qualified under Paragraph 3(e):

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

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

Paragraph 10(e) information also provided.

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

Paragraph 10(e) information also provided.

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

Paragraph 10(e) information also provided.

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

Paragraph 10(e) information also provided.