

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com
Suite 400
333 S.W. Taylor
Portland, OR 97204

December 28, 2005

Via Electronic and U.S. Mail

Filing Center
Administrative Hearings Division
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: In the Matter of OREGON PUBLIC UTILITY STAFF Requests the Commission direct PACIFIC POWER & LIGHT, dba PACIFICORP, to file tariffs establishing automatic adjustment clauses under the terms of SB 408.
Docket Nos. UE 177, UE 178, UG 170 & UG 171

Dear Filing Center:

Enclosed please find the original and six copies of the Industrial Customers of Northwest Utilities' Response in Opposition to Joint Motion for Protective Order in the above-referenced proceeding.

Please call me if you have any questions. Thank you for your assistance.

Sincerely,

/s/ Anna E. Studenny
Anna E. Studenny

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the Industrial Customers of Northwest Utilities' Response in Opposition to Joint Motion for Protective Order upon the parties on the service list, shown below, by causing the same to be mailed, postage-prepaid, through the U.S. Mail.

Dated at Portland, Oregon, this 28th day of December, 2005.

/s/ Anna E. Studenny
Anna E. Studenny

LOWREY R BROWN CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY - STE 308 PORTLAND OR 97205 lowrey@oregoncub.org	SARAH J ADAMS LIEN STOEL RIVES LLP 900 SW FIFTH AVE - STE 2600 PORTLAND OR 97204-1268 sjadamslien@stoel.com
JASON EISDORFER CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org	DOUGLAS C TINGEY PORTLAND GENERAL ELECTRIC 121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com
PGE-OPUC FILINGS RATES & REGULATORY AFFAIRS PORTLAND GENERAL ELECTRIC COMPANY 121 SW SALMON ST 1WTC0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com	EDWARD A FINKLEA CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP 1001 SW 5TH - STE 2000 PORTLAND OR 97204 efinklea@chbh.com
DAVID HATTON DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 david.hatton@state.or.us	CHAD M STOKES CABLE HUSTON BENEDICT HAAGENSEN & LLOYD, LLP 1001 SW 5TH - STE 2000 PORTLAND OR 97204 cstokes@chbh.com
MARCUS A WOOD STOEL RIVES LLP 900 SW FIFTH AVE - STE 2600 PORTLAND OR 97204 mwood@stoel.com	JASON W JONES DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 jason.w.jones@state.or.us
RON MCKENZIE AVISTA UTILITIES PO BOX 3727 SPOKANE WA 99220-3727 ron.mckenzie@avistacorp.com	

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 177, UE 178, UG 170, and UG 171

In the Matter of OREGON PUBLIC UTILITY)
COMMISSION STAFF directing:)
)
PACIFIC POWER & LIGHT dba)
PACIFICORP, (UE 177))
) RESPONSE OF THE INDUSTRIAL
PORTLAND GENERAL ELECTRIC) CUSTOMERS OF NORTHWEST UTILITIES
COMPANY, (UE 178)) IN OPPOSITION TO JOINT MOTION FOR
) PROTECTIVE ORDER
NORTHWEST NATURAL, (UG 170))
)
and)
)
AVISTA UTILITIES (UG 171))
)
to File Tariffs Establishing Automatic)
Adjustment Clause Under the Terms of)
SB 408.)
_____)

Pursuant to OAR § 860-013-0050, the Industrial Customers of Northwest Utilities (“ICNU”) submits this Response in Opposition to the Joint Motion for Protective Order filed by PacifiCorp, Portland General Electric Company (“PGE”), Avista Corporation (“Avista”), and Northwest Natural Gas Company (“Northwest Natural”) (collectively, the “IOUs”) on December 13, 2005, in Public Utility Commission of Oregon (“OPUC” or the “Commission”) Docket Nos. UE 177, UE 178, UG 170, and UG 171 (collectively, the “Automatic Adjustment Clause Dockets”).^{1/} ICNU opposes the IOUs’ request for an amended protective order that would

^{1/} ICNU has submitted this Response under the caption of all four dockets to reflect the form of the Joint Motion. ICNU submitted a petition to intervene in Dockets UE 177 and UE 178 only.

impose a “safe room” procedure on disclosure of the tax reports and supporting information provided to the Commission as required by Senate Bill 408 (“SB 408”). The Commission should deny the Joint Motion for the following reasons:

1. The “safe room” procedures proposed by the IOUs are unduly burdensome and will severely prejudice ICNU’s ability to review and use the tax information. These procedures will hinder ICNU’s ability to effectively participate in these proceedings and limit ICNU’s ability to contribute to the record in these proceedings.
2. The severe restrictions proposed by the IOUs are unjustified. The only non-utility entities that currently have been granted party status in the Automatic Adjustment Clause Dockets are OPUC Staff, ICNU, the Citizens’ Utility Board (“CUB”), and the Northwest Industrial Gas Users (“NWIGU”).^{2/} These parties have a long history of participation in OPUC proceedings and handling utilities’ confidential information, and the potential for unauthorized public disclosure by these parties simply does not justify imposing the overly restrictive protections proposed by the IOUs. More reasonable alternatives are available.
3. The IOUs’ proposals do not provide a means to submit any information designated highly confidential, including the tax reports and supporting data, to the Commission for the purposes of these proceedings or AR 499.
4. The IOUs’ requirement to have a monitor to oversee the review of documents in the safe room may violate the attorney-client privilege and/or work product doctrines.
5. The request for blanket authority to designate information as highly confidential is overly broad given that the only specific information that the IOUs allege is “highly confidential” is the tax reports and supporting data.

^{2/} On December 28, 2005, ICNU received a service copy of a petition to intervene in the Automatic Adjustment Clause Dockets on behalf of Ken Lewis and the Utility Reform Project (“URP”). Mr. Lewis and URP have not been granted party status as of the time for filing ICNU’s Response, and ICNU’s Response was, for the most part, prepared prior to receiving this petition to intervene.

ICNU urges the Commission to reject the IOUs' proposals and issue a narrowly-tailored standard protective order as described below.^{3/} If the Commission declines to issue a narrowly-tailored standard protective order, ICNU proposes, as an alternative, that the Commission adopt an amended protective order with the "highly confidential" provisions included in Attachment A to this Response.

BACKGROUND

SB 408 took effect on September 2, 2005, amending ORS Ch. 757 to require the IOUs to file with the Commission a tax report that details the amount of taxes collected and taxes paid by the utility within the previous three years. The statute also provides that "[e]very public utility shall be required to obtain and provide to the commission any other information that the commission requires to review the tax report and to implement and administer this section and ORS 757.210." SB 408 § 3(2). Section 3(11) of SB 408 specifically provides for disclosure of all information obtained by the Commission, including the tax reports:

An intervenor in a commission proceeding to review the tax report or make rate adjustments described in this section may, upon signing a protective order prepared by the commission, obtain and use the information obtained by the commission that is not otherwise required to be made publicly available under this section, according to the terms of the protective order.

On October 15, 2005, the IOUs filed tax reports with the Commission, purportedly to comply with the requirements in SB 408.^{4/}

^{3/} As described below, ICNU recommends that the Commission also incorporate the IOUs' suggestion for this protective order to apply in Docket AR 499 as well.

^{4/} ICNU does not agree that the tax reports filed by the IOUs comply with SB 408 or the Commission's temporary rule.

The Commission opened the Automatic Adjustment Clause Dockets on or about November 22, 2005, in order to review the tax reports and require the IOUs to file automatic adjustment clause tariffs to make the rate adjustments called for in SB 408.

On December 13, 2005, the IOUs filed the Joint Motion, requesting that the Commission issue an amended protective order that includes a “highly confidential” designation and provides that highly confidential information will be disclosed only in a designated “safe room.” Under the IOUs’ proposal, the IOUs would have blanket authority to designate documents and information as “highly confidential.” The IOUs propose to define highly confidential information as “documents and information the dissemination of which imposes a highly significant risk of competitive harm to the disclosing party, which may include but is not limited to SB 408 Tax Reports and supporting documents containing tax data and analyses.”

Joint Motion at 3.

Under this proposal, the IOUs’ would not provide copies of highly confidential information to the requesting party. Instead, the IOUs would disclose the information according to the following safe room procedures:

- The IOUs will establish separate safe rooms—one each for PacifiCorp, PGE, Northwest Natural, and Avista—for disclosure of highly confidential information to qualified persons;^{5/}
- Qualified persons needing access to the highly confidential information would be required to provide written notice twenty-four hours in advance to an individual designated by the utility and make a safe room appointment;
- Safe room appointments are limited to the hours of 9 a.m. – 12 p.m. and 1 p.m. to 5 p.m. on weekdays, excluding holidays;

^{5/} A separate safe room would be established in Salem for OPUC Staff to review highly confidential information.

- A qualified person would be restricted to making “limited notes regarding the documents for reference purposes only,” and those notes would be considered “confidential” under the protective order;
- The IOUs may require a monitor in the safe room; and
- These procedures also will apply in Docket AR 499.

Joint Motion at 2-4. The IOUs’ proposal would preclude the parties from using any specific details from highly confidential information for the purposes of testimony or comments in these proceedings. Indeed, the IOUs do not propose any procedure for parties to provide such information to the Commission. For the reasons described below, the IOUs’ proposals are unjustified, unduly burdensome, and will severely prejudice ICNU’s ability to effectively participate in this proceeding and AR 499.

ARGUMENT

The IOUs’ tax reports and the supporting data is the most basic and fundamental information that SB 408 requires the IOUs to provide to the Commission, and the statute itself provides that intervenors will be able to “obtain and use” that information subject to the terms of a protective order. The Joint Motion seeks to prevent the parties in this proceeding from being able to “obtain and use” this information on reasonable terms. The IOUs’ proposals will significantly impede ICNU’s ability to review and understand the tax reports and ultimately will hinder development of a full factual record upon which to properly implement the SB 408 automatic adjustment clauses. Under these circumstances, the benefit of the disclosure of the tax reports and supporting data on reasonable terms outweighs the potential harm asserted by the IOUs from disclosure to the parties at issue. ICNU urges the Commission to adopt the standard

protective order to govern the disclosure of the tax reports and supporting data to apply to the limited parties currently in the Automatic Adjustment Clause Dockets. If the Commission does not adopt a standard protective order, ICNU recommends that a modified protective order be issued that includes the highly confidential provisions set forth in Attachment A.

1. The Benefit of Disclosure on Reasonable Terms Outweighs the Potential for Harm from Disclosure to the Parties at Issue

The IOUs have requested to apply the safe room procedure “as an alternative to seeking additional protection” under the standard protective order. Joint Motion at 3. The Commission has addressed previous requests for additional protection by “balanc[ing] the potential harm which might occur from the disclosure of the information requested against the benefit which might accrue from the information being disclosed.” Re PacifiCorp, OPUC Docket No. UE 116, Order No. 01-219 at 2 (Mar. 9, 2001). The “potential harm” that the Commission has considered is the harm that might result from disclosure to the requesting parties, not speculation about potential harm of disclosure to a broad group of parties in general. See id.; see Re ScottishPower, OPUC Docket No. UM 918, Order No. 99-106 at 2 (Feb. 19, 1999); see Re PGE, OPUC Docket No. UE 102, Order No. 98-294 at 3 (July 16, 1998). The Commission has granted additional protection infrequently, and, in doing so, has cautioned that its orders “should not be used as general precedent in support of protection beyond that granted under the Commission’s standard protective order. Prior orders granting additional protection have been narrow rulings that have been considered on a case-by-case basis.” OPUC Docket No. UM 918, Order No. 99-106 at 2; see OPUC Docket No. UE 116, Order No. 01-219 at 2; OPUC Docket No. UE 102, Order No. 98-294 at 3.

The Commission and the parties in this proceeding will substantially benefit from disclosure of the tax reports and supporting information on reasonable terms. Disclosure on reasonable terms will: 1) allow ICNU to fully and effectively participate in these proceedings; and 2) enable ICNU to meaningfully contribute to the record based on an understanding of the tax reports. The ultimate benefit to all parties and the Commission under these circumstances is facilitating the development of a well-developed and robust record. Creating a well-developed record is particularly important given that this is the first time for the Commission to establish the automatic adjustment clauses required by the statute. These benefits far outweigh the potential for unauthorized public disclosure by the parties currently in these proceedings.

2. The “Safe Room” Protections for Highly Confidential Information Will Unduly Prejudice ICNU’s Ability to Effectively Participate in this Docket and AR 499

Given the complicated nature of utility income tax information, reviewing and understanding the tax reports and supporting data likely will take significant time and effort, and will require the use of tax experts. The IOUs’ proposal to restrict access to this information to the safe rooms would add to the already complicated task of reviewing the tax reports by creating burdens that will not allow intervenors to “obtain and use” the tax reports on reasonable terms.

a. The Safe Room Protections Create a Substantial Burden Associated with Reviewing Highly Confidential Information

One of the primary benefits of receiving hardcopies of information in discovery is the ability to access that information at any time. The IOUs’ request to limit review of all highly confidential information to the safe rooms would eliminate that benefit with respect to the most basic and fundamental information necessary to address the issues in this proceeding.

In addition, the IOUs' proposed procedural requirements create additional burdens. First, the IOUs would require twenty-four hours advance written notice to make a safe room appointment any time that a qualified person needs review to highly confidential information. In Portland, this would require providing written notice one day in advance to multiple persons in order visit multiple data rooms. Second, safe room appointments would be restricted to weekdays during business hours. The procedural process associated with the determinations required under SB 408 has not yet been established; however, the demands associated with participating in typical OPUC proceedings often require access to basic information outside of business hours. Scheduling and setting aside the time necessary to make trips to multiple data rooms to review discovery will be inefficient and unworkable.

b. The Limitations on Note Taking Are Undefined and Will Hinder Participation in these Proceedings

The IOUs also propose that qualified persons be restricted to taking "limited notes regarding the documents for reference purposes only" and that "[s]uch notes shall not constitute a verbatim or substantive transcript of the documents." Joint Motion at 4. First, limiting the use of this information to "reference purposes only" appears to prevent parties from using any highly confidential information, including the tax report and supporting data, for the purposes of testimony or pleadings. Indeed, the parties will not have any highly confidential documents, are prohibited from taking verbatim notes about highly confidential information, and there is no procedure to govern providing any highly confidential information in submissions to the Commission. This will effectively prevent the parties from communicating with the Commission about all information that the IOUs designate as highly confidential.

Second, the tax reports and supporting information likely include numerical values and other detailed data that will be relevant to the determinations required by SB 408, and the restrictions on note taking will prevent qualified persons from recording any of the relevant values in writing. Prohibitions that prevent communication with the Commission and eliminate the ability to have any detailed written recording create a situation that is unworkable for effective participation in OPUC proceedings.

c. The Safe Room Procedures Are Unworkable for Consultants Outside of Portland

ICNU intends to retain James Selecky to assist in reviewing the tax report and supporting information provided to the Commission. Mr. Selecky is a utility regulation consultant based in St. Louis, Missouri, who appeared as a witness on behalf of ICNU in the recently completed PacifiCorp rate case (UE 170). Mr. Selecky addressed, among other things, the tax expense included in PacifiCorp's revenue requirement, and he is familiar with utility tax issues and SB 408. Given Mr. Selecky's location in St. Louis, however, the IOUs' proposed safe room protections pose unique burdens for ICNU. First, Mr. Selecky would be required to travel to Portland to review highly confidential information, subject to all the notice requirements and time limitations described above, and it is reasonable to expect that reviewing the information would require multiple days in the safe rooms. In addition, given the IOUs' other proposed limitations, counsel for ICNU would likely need to be present when Mr. Selecky reviews the tax report and supporting data to discuss the information. It simply is unreasonable and unjustified to impose restrictions that would require a party's counsel and consultant to spend multiple days together in a safe room just to review the most basic information in the proceeding.

Second, because of the IOUs' proposed note taking limitations, Mr. Selecky would be prevented from retaining any detailed written account of the information reviewed. As a result, any subsequent discussion between counsel for ICNU and Mr. Selecky regarding the details of the tax reports would be based on memory. Such a situation creates unworkable restrictions associated with basic elements of participating in these proceedings.

d. Requiring a Monitor in the Safe Room May Violate the Attorney-Client Privilege and/or Work Product Doctrine

The IOUs' proposal to "require the presence of a monitor" in the safe room also violates the attorney-client privilege and work-product doctrines. Joint Motion at 4. The purpose of the work product doctrine is to protect "the mental process of the attorney, providing a privileged area within which he can analyze and prepare his client's case." State v. Riddle, 330 Or. 471, 483 (2000). As described above, under the IOUs' proposals, it is likely that counsel and consultant for ICNU would need to be in the safe room together to review and discuss the tax reports and supporting information. Discussions between counsel and consultant and any notes taken during those discussions are subject to the attorney-client privilege and/or work product doctrine. The presence of a monitor could violate those privileges or, at the very least, is inconsistent with counsel's obligation to make efforts to preserve the privileges. The Commission should not adopt restrictions that run afoul of such fundamental protections that apply in OPUC proceedings and all other litigation.

e. The IOUs Have Not Justified Blanket Authority to Designate Documents or Information as Highly Confidential

The IOUs allege that the need for the highly confidential designation applies to a "very limited" group of documents that the IOUs generally classify as the "SB 408 Tax Reports

and supporting documents containing tax data and analyses that have been designated as confidential by [the IOUs].” Joint Motion at 2. The proposed protective order, however, would provide the IOUs broad discretion to designate any documents or information requested in discovery as highly confidential. The IOUs have not justified such blanket authority.

The only specific information and documents that the IOUs identify as warranting highly confidential status are the tax reports and supporting data. If the Commission issues a protective order with highly confidential provisions, it should limit that designation to those documents and information.

3. The Benefit of Meaningful Participation and a Fully-Developed Record Outweighs the Potential for Harm from Disclosure to the Parties in These Proceedings

The IOUs assert as the basis for the request for a highly confidential designation the possibility of “unauthorized public disclosure” that may result from disclosure of the tax information to “Staff and others.” Joint Motion at 1-2. The IOUs’ allegations of the potential harms of broad disclosure to an undefined group of parties ignore the procedural status of these proceedings and the language of SB 408. The IOUs filed the Joint Motion in the Automatic Adjustment Clause Dockets, in which Staff, ICNU, CUB, and NWIGU currently are the only non-utility parties. Thus, the “potential harm” for the Commission to consider is that which may result from disclosing the information at issue to those parties.^{6/} See OPUC Docket No. UM 918, Order No. 99-106 at 2; OPUC Docket No. UE 102, Order No. 98-294 at 3.

^{6/} The IOUs request that the proposed protective order allow for use of information in the Automatic Adjustment Clause Dockets and in AR 499. The IOUs have not asserted that any party in AR 499 has requested the information at issue. Thus, it is not the disclosure to that broad group of parties that is at issue. In addition, no party in AR 499 would have been able to gain access to highly confidential information without first becoming a party to the Automatic Adjustment Clause Dockets, requesting the information, and signing a protective order issued by the Commission.

a. The Standard Protective Order is Sufficient to Protect Against Unauthorized Public Disclosure

ICNU, CUB, Staff, and NWIGU have a long history of participating in OPUC proceedings and handling confidential information provided by the utilities. The protections provided by the standard protective order have sufficiently protected against unauthorized public disclosure in numerous proceedings in which these parties have participated in the past, and ICNU urges the Commission to issue a standard protective order to govern the disclosure of the tax reports and supporting information to these parties. To address certain concerns raised by the IOUs, however, ICNU proposes two amendments to the standard protective order:

1. Adopt the IOUs' suggestion to apply the protective order in Docket AR 499 as well as in the Automatic Adjustment Clause Dockets;^{7/} and
2. Apply the protective order to only those entities granted party status in the December 9, 2005 prehearing conference memorandum issued in the Automatic Adjustment Clause Dockets.

Applying these limitations should significantly minimize the risk of unauthorized public disclosure that the IOUs assert as a potential harm by making a "party-specific" protective order. This will allow parties to have access to confidential information on reasonable and workable terms, while still imposing the stringent protective provisions of the standard protective order. If another person or entity is granted party status in the Automatic Adjustment Clause Dockets and requests information that an IOU considers highly confidential, the IOU will have the ability to request additional protection.

^{7/} The revisions proposed by the IOUs in paragraphs 8 and 9 of the Joint Motion are sufficient to accomplish this modification to the standard protective order.

b. If the Commission Does Not Adopt a Narrowly-Tailored Standard Protective Order, Then It Should Adopt More Reasonable Restrictions for Highly Confidential Information

As an alternative to issuing a standard protective order that is limited to the parties currently in this proceeding, ICNU supports amending the standard protective order to add highly confidential provisions that allow the disclosure of the tax reports and supporting information on reasonable terms. Attachment A provides terms that ICNU supports to govern the disclosure of highly confidential information in the Automatic Adjustment Clause Dockets. To address the applicability issue raised by the IOUs, ICNU also supports adoption of these protections for purposes of AR 499.^{8/} The primary protections detailed in Attachment A are:

- “Highly confidential” information would consist of the tax reports and information and documents used to prepare the tax reports;
- A party may designate no more than two counsel and one consultant to receive highly confidential information;
- Designated counsel and consultant must execute the standard protective order confidentiality agreement and the “Highly Confidential Information Agreement” included in Attachment A;
- Designated counsel would be provided one copy of highly confidential documents;
- Copying of highly confidential documents would be prohibited, except that designated counsel may provide one copy of highly confidential documents to the designated consultant;
- Designated counsel and consultant will keep highly confidential information in a secure location;
- Highly Confidential information could be provided to the OPUC subject to certain requirements; and

^{8/} As described above, the revisions that the IOUs propose in paragraphs 8 and 9 of the Joint Motion are sufficient to accomplish this task.

- Highly confidential information shall be returned at the end of the proceeding, upon written request by the disclosing party.

These provisions are more restrictive than the standard protective order but include more workable terms than the IOUs' safe room limitations. ICNU's proposal is modeled after a letter agreement that ICNU recently entered into with MidAmerican Energy Holdings Company and PacifiCorp to govern ICNU's access to highly confidential information in OPUC Docket No. UM 1209.^{9/} These measures have worked well in previous proceedings, and a protective order that includes these provisions will provide sufficiently stringent, yet workable, protections in these proceedings.

CONCLUSION

The safe room procedures proposed by the IOUs are unworkable and will substantially impair ICNU's ability to effectively participate and contribute to the record in these proceedings. The benefit to ICNU, the Commission, and the record in this proceeding from the disclosure of the tax reports and supporting information on reasonable terms far outweighs the potential for harm from an unauthorized public disclosure by the parties currently in the Automatic Adjustment Clause Dockets. ICNU urges the Commission to issue a standard protective order, with the two amendments described above, to govern the disclosure of confidential information to the groups that were granted party status in the December 9, 2005

^{9/} The letter agreement was modeled after the highly confidential protective order that has been used in a number of Washington Utilities and Transportation Commission proceeding in which ICNU has participated.

prehearing conference memorandum. In the alternative, the Commission should issue a protective order with highly confidential provisions as set out in Attachment A.

Dated this 28th day of December, 2005.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Matthew Perkins

Matthew Perkins

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 phone

(503) 241-8160 facsimile

mail@dvclaw.com

Of Attorneys for Industrial Customers
of Northwest Utilities

ATTACHMENT A

Designation and Disclosure of Highly Confidential Information. Parties must scrutinize carefully responsive documents and information and limit the amount they designate as Highly Confidential Information to only information consisting of the tax reports submitted to the Commission as required by Senate Bill 408 and information and documents used to prepare those tax reports. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads: **“HIGHLY CONFIDENTIAL PER PROTECTIVE ORDER IN OPUC DOCKETS NO. UE 177, UE 178, UG 170, and UG 171.”** 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 with references (*i.e.*, highlighting) to where Highly Confidential Information is redacted in the original document.

Parties who seek access to or disclosure of highly confidential documents or information must designate no more than two lead counsel and no more than one consultant, legal or otherwise, to receive and review materials stamped “Highly Confidential.” Additional counsel within the same firm who are assisting a party’s lead counsel may be designated for review of Highly Confidential documents. In addition to executing the Agreement required by the Protective Order for “Confidential Information,” each person so designated as counsel or consultant for review of Highly Confidential documents or information must execute a Highly Confidential Information Agreement, in the form attached to this protective order, certifying that they have read and understand, and agree to be bound by, the terms of the Protective Order.

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 parties shall submit for Commission determination whether the Highly Confidential Information must be disclosed to the challenged individual.

Designated counsel will maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel and other attorneys within the same firm who are assisting designated counsel have access. Designated counsel may provide one copy of Highly Confidential documents or information to the consultant who has been designated to receive Highly Confidential Information. Such designated consultant will also maintain the Highly Confidential documents or information in a secure location to which only the designated consultant 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 THE PROTECTIVE ORDER.

Staff of designated counsel and staff of designated consultants who are authorized to review Highly Confidential Information may have access to Highly Confidential documents or information for purposes of processing the case, including but not limited to, receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits, and briefs. Counsel and consultants are responsible for appropriate supervision of their staff to ensure the protection of all confidential information consistent with the terms of this Protective Order.

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 parties will consult with the presiding officer and submit for his or her determination the process for including such documents or information.

The designation of any document or information as Highly Confidential may be challenged by motion and the parties agree that the classification of the document or information as Highly Confidential will be considered in chambers by the presiding officer(s). 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 counsel, upon written request, 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 INFORMATION AGREEMENT
PUBLIC UTILITY COMMISSION OF OREGON
DOCKETS NO. UE 177, UE 178, UG 170, and UG 171

I, _____, as

- In-house attorney
- In-house expert
- Outside counsel
- Outside expert

in this proceeding for _____ (a party to this proceeding) hereby agree to comply with and be bound by the Protective Order entered by the Public Utility Commission of Oregon in Dockets No. UE 177, UE 178, UG 170, and UG 171 and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

Signature

Date

Employer

Permanent Address

Position and Responsibilities