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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 119

In the Matter of the Application of PACIFICORP for)
Approval of a 2000 Resource Plan as a Foundation for) PROTECTIVE ORDER
Restructuring under Senate Bill 1149.)

On December 4, 2000, PacifiCorp filed a Motion for a Protective Order. PacifiCorp asserts that material included within the scope of discovery in this proceeding contains confidential and proprietary information. PacifiCorp states that the release of confidential information could provide advantages to its competitors, and impair its ability to enter into necessary contracts and honor confidentiality provisions of existing agreements.

I find that good cause exists to issue a Standard Protective Order, attached as Appendix A. OAR 860-012-0035(1)(k). Under the terms of that order, a party may designate as confidential any information it believes falls within the scope of ORCP 36(C)(7). Once designated as confidential, the information may be disclosed only to “qualified persons” associated with parties that have agreed to be bound by the terms of the protective order by signing the signatory page set forth in Appendix B.

Paragraph 3 of the protective order establishes two categories of “qualified persons.” The first category, set forth in subsections (a) through (d), includes the authors of the confidential material, the Commission or its Staff, and counsel of record for a party or persons directly employed by counsel. This group of persons is entitled to review confidential information without the need to give notice to the party desiring confidentiality or execute an additional statement agreeing to be bound by the terms of the order. As noted above, however, a party must sign the signatory page before anyone associated with the party, including its counsel, may review the confidential material.

Subsections (e) through (g) of Paragraph 3 set forth the second category of qualified persons. These include unaffiliated party experts, persons approved by the party desiring confidentiality, and persons designated as qualified by Commission order. As a prerequisite to gaining access to confidential information, this second category of qualified persons must execute a consent to be bound. Prior to disclosing confidential information to an unaffiliated expert, the party seeking to disclose the information must also notify the party desiring confidentiality. *See* Paragraphs 7 and 8. Paragraph 9 provides the procedures for when a party desires to disclose information to a person who is not qualified under Paragraph 3. In such circumstances, the party must request permission from the party desiring confidentiality and provide certain information, including the identity of the unqualified person and the specific reasons why disclosure is necessary. If the party desiring confidentiality fails or refuses to grant the request, the party seeking disclosure may file a motion to qualify the person by Commission order.

To assist the Commission and parties in determining whether an individual is entitled to review confidential information, counsel for each party shall submit a list of “qualified persons” associated with that party. Counsel shall submit the list of names at the time it files with the Commission a copy of the signed “consent to be bound.” A copy of the list shall be served on all parties to the case. If the party desiring confidentiality disagrees with the designation of any individual as a qualified person, 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 confidentiality may file a motion seeking exclusion of the individual from the list of qualified persons.

All persons who are given access to confidential information have the duty to monitor their own conduct to ensure their compliance with the Protective Order. Such persons shall not use or disclose the 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.

ORDER

IT IS ORDERED that:

- (1) The Standard Protective Order, attached as Appendix A, shall govern the disclosure of confidential information in this case.
- (2) Each party shall submit a list of “qualified persons” associated with that party at the time it files with the Commission a copy of the signatory page set forth in Appendix B.

Made, entered, and effective December 7, 2000, pursuant to OAR 860-012-0035(1)(k).

Ruth Crowley
Administrative Law Judge

This order may be appealed to the Commission pursuant to OAR 860-014-0091. The appeal should be in the form of a motion. *See* OAR 860-013-0031.