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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UM 1040

In the Matter of )  
 )  
 PORTLAND GENERAL ELECTRIC )  
 )  
 Application for an Order Approving Deferral of )  
 Certain Advertising Costs. )

ORDER

DISPOSITION: MOTION FOR APPROVAL OF MODIFIED PROTECTIVE ORDER GRANTED

On January 21, 2003, Portland General Electric (PGE) filed a Motion for Approval of Modified Protective Order. PGE asserts that material included within the scope of discovery in this proceeding contains confidential and proprietary information and that the release of such information could provide advantageous to its competitors. PGE further asks the Commission to issue a modified protective order rather than a standard protective order, so as to reduce disputes regarding the distribution of confidential information. None of the parties filed objection to the motion.

We have approved a similar version of this modified protective order in several other dockets, including UE 115 and UM 1045. We will grant PGE's motion.

**ORDER**

IT IS ORDERED that:

1. The Motion for Approval of a Modified Protective Order, filed by PGE, is granted.
2. The Modified Protective Order, attached as Appendix A, shall govern the disclosure of confidential information in this docket.

- 3. Each party shall file a copy of the signatory page with the Commission, along with a list of "qualified persons" who are associated with that party.

Made, entered, and effective \_\_\_\_\_.

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**Roy Hemmingway**  
Chairman

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**Lee Beyer**  
Commissioner

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**Joan H. Smith**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

MODIFIED PROTECTIVE ORDER

**Scope of this Order-**

1. This order governs the acquisition and use of “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. A “qualified person” is an individual who is:

- a. The author(s), addressee(s), or originator(s) of the Confidential Information;
- b. The Commissioner(s) or the Commission Staff;
- c. Counsel of record for a party;
- d. A person employed directly by counsel of record; or
- e. Persons qualified pursuant to Paragraph 8.

**Designation of Confidential Information-**

4. A party providing Confidential Information shall inform other parties that the material has been designated confidential by placing the information on yellow paper, with the following designation:

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. 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.

**Disclosure of Confidential Information-**

6. Parties desiring receipt of Confidential Information shall sign the Consent to be Bound Form attached to the end of this Appendix A. Confidential Information shall not be disclosed to any person other than a “qualified person,” as defined in paragraph 3. 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 presiding officer.

7. To preserve the ability to protect Confidential Information, no party shall share Confidential Information with qualified person(s) associated with another party or with Commission Staff except as expressly allowed by the party desiring confidentiality or by order of the presiding officer.

8. Before reviewing Confidential Information, a person qualified under paragraph 3(e) must:
- a. Read a copy of this Protective Order;
  - b. Execute a statement acknowledging that the order has been read and agreeing, in return, for access to the information, to be bound by the terms of the order;
  - c. Date the statement;
  - d. Provide his or her 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 their 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. A person qualified under paragraph 3(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.

9. Subject to paragraphs 7 and 8, all qualified person(s) shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The party desiring to restrict 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 meet and attempt to resolve any dispute over access to Confidential Information on an informal basis before filing a motion with the presiding officer. If the dispute cannot be resolved informally, either party may file a motion with the presiding officer for resolution. Any such 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) pending informal resolution between the parties or the presiding officer's or Commission's ruling on a motion.

**Preservation of Confidentiality-**

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 purposes of business competition, or 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.

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 not disclose Confidential Information to anyone who is not a qualified person.

**Information Given to the Commission-**

11. 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. To the extent practicable, 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.

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

**Duration of Protection-**

13. The confidentiality of Confidential Information shall be preserved until the Commission, by order, terminates the protection conferred by this order.

**Destruction After Proceeding-**

14. Counsel of record may retain memoranda or pleadings containing Confidential Information to the extent reasonably necessary to maintain a file of this proceeding. 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.

**Appeal to the Presiding Officer-**

15. 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 Commission or the presiding officer on the motion.

**Additional Protection-**

16. 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 any 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

DOCKET NO. UM 1040

**Consent to be Bound-**

This 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

\_\_\_\_\_ (Party) authorizes the following persons to review Confidential Information on its behalf. Qualified person(s) under paragraph 3(a) through (d) do not need to sign this Protective Order. Each person signing and dating this document below acknowledges that he or she has read a copy of the Protective Order and agrees to be bound by its terms.

By:		
	Signature & Printed	Date

By:		
	Signature & Printed	Date

By:		
	Signature & Printed	Date

By:		
	Signature & Printed	Date