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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1050

In the Matter of	)	
	)	PHASE 2
PACIFICORP	)	PROTECTIVE ORDER
	)	
Application to Initiate Investigation of	)	
Multi-Jurisdictional Issues.	)	

DISPOSITION: PHASE 2 PROTECTIVE ORDER GRANTED

On April 22, 2002, a protective order was entered in this docket. Since that time, parties have been engaged in a multistate collaborative effort to resolve multijurisdictional issues.

On September 30, 2003, PacifiCorp filed a motion in this docket for ratification of its interjurisdictional cost allocation protocol. During the prehearing conference held October 22, 2003, it was agreed that a new protective order would issue for the second phase of this docket.

It is not necessary for PacifiCorp to file a new motion as its reasons for needing a protective order have not changed. As stated in the first protective order, PacifiCorp asserted that confidential and propriety information is within the scope of discovery in this proceeding, and that the release of such information could provide advantages to its competitors, impair its ability to enter into necessary contracts, and make it difficult to honor confidentiality provisions in existing agreements. Specifically, PacifiCorp is concerned that propriety cost data and models, commercially sensitive pricing information, confidential market analyses and business projections, and confidential information regarding contracts for the purchase or sale of electric power or power services will be requested.

I find that good cause exists to issue a Standard Protective Order, attached as Appendix A. *See* 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.

The confidentiality of confidential information shall be preserved for a period of two years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality.

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 Phase 2 of 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 _____.

_____

Kathryn A. Logan
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.

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APPENDIX A

STANDARD 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;

      e.   An unaffiliated expert retained by a party;

      f.   A person approved by the party desiring confidentiality (pursuant to paragraph 9); or

      g.   A party designated a qualified person by order of the Commission (pursuant to paragraph 9).

Designation of Confidential Information-

      4.   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 only the 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.   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.   Before reviewing confidential information, a person qualified under paragraphs 3(e) through 3(g) 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; and

   c.   Date the statement.

Counsel shall, upon request, deliver a copy of the signed statement to the party desiring confidentiality.

8.   Prior to disclosing confidential information to an unaffiliated expert qualified under paragraph 3(e), the party seeking to disclose the information must notify the party desiring confidentiality, in writing, at least three business days prior to the intended disclosure. The notice shall state:

   a.   The exact nature of the information to be disclosed;

        b.   The identity of the unaffiliated expert; and

        c.   Any past, present, or anticipated future affiliation between the expert and any party to the proceeding.

9.   When a party desires to disclose confidential information to an unqualified person, the party must, in writing, request permission from the party desiring confidentiality. The request must state:

        a.   The exact nature of the information to be disclosed;

        b.   The identity of the person(s) to whom it would be disclosed;

        c.   The nature of any past, present, or anticipated future affiliation between the person(s) and any party to this proceeding; and

        d.   The specific reasons why disclosure is necessary.

If the party desiring confidentiality agrees to disclosure, the person to receive the information will become qualified under paragraph 3(f) for the information identified in the request. If a party requests permission to disclose confidential information to an unqualified person, and the party desiring confidentiality fails to grant permission in writing within three business days, the party requesting disclosure may move to qualify the person under paragraph 3(g). The motion must contain the information set forth in the original request. The information shall not be disclosed pending the presiding officer's ruling on the 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 or 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.

With the exception of Commission staff, parties may not copy, microfilm, microfiche, or otherwise reproduce confidential information without the written consent of the providing party.

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 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 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. 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).

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 10 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. A 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; and

d. The specific reasons the requested relief is necessary.

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

ORDER NO.

SIGNATORY PAGE
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Consent to be Bound-

This order governs the use of "confidential information" in this proceeding.

I have read this Order, including Appendix A, and agree to be bound by its terms.

_____   _____
Signature & Printed   Date

_____
Party

_____   _____
Signature & Printed   Date

_____
Party

_____   _____
Signature & Printed   Date

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Party

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Signature & Printed   Date

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Party

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Signature & Printed   Date

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Party