

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1208

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY)	SPECIAL PROTECTIVE ORDER
)	
Draft 2012 Requests for Proposals.)	

**DISPOSITION: MOTION FOR ADDITIONAL PROTECTION
GRANTED**

On October 16, 2006, the staff of the Public Utility Commission of Oregon (Staff) filed a motion seeking additional protection as provided for under paragraph 16 of the General Protective Order issued in this docket. See Order No. 06-444. Specifically, Staff asks a Special Protective Order be issued to govern the disclosure of confidential information submitted by persons responding to the Commission’s Request for Proposals (RFP) for an Independent Evaluator (IE).

Staff explains that the IE will assist the Commission in evaluating PacifiCorp’s RFP under consideration in docket UM 1208. In earlier proceedings, the Commission adopted guidelines for the selection of the IE, and clarified that non-bidding parties (*i.e.*, parties that would not be submitting a response to PacifiCorp’s RFP) would be allowed to provide input to Staff in the selection of the IE. See Order No. 06-446 at 7. Staff now seeks a Special Protective Order to allow qualified non-bidders to review the confidential IE responses.

Staff recommends a Special Protective Order be issued to require each signatory to promise that it will not disclose any material in an IE response that the responder has requested be kept confidential, except as otherwise provided for in the General Protective Order. Because the responses to the IE RFP are due October 18, 2006, Staff also requests expedited consideration of this motion to facilitate the timely exchange of information. Staff adds that it generally explained the nature of its motion to the parties in this docket approximately 10 days ago and no party had objected.

I find that good cause exists to issue a Special Protective Order, attached as Appendix A. The order applies specifically to confidential information submitted in response to Staff’s RFP for an IE. In addition to Staff and responder submitting the material, information contained in the IE responses shall be disclosed only to non-bidders who become qualified by signing the Consent to be Bound Form attached as Appendix B.


All persons who are given access to confidential information have the good faith obligation to monitor their own conduct to ensure their compliance with the Special Protective Order. Such persons shall not use or disclose the information for any purpose other than providing input to Staff in the selection of the IE, and shall take all reasonable precautions to keep the confidential information secure. If questions exist as to the status of any person to receive confidential information, the parties may contact the Administrative Hearings Division at (503) 378-6678.

ORDER

IT IS ORDERED that the Special Protective Order, attached as Appendix A, shall govern the disclosure of confidential information submitted in response to Staff's Request for Proposals for an Independent Evaluator.

Made, entered, and effective on OCT 17 2006.





Michael Grant
Chief Administrative Law Judge

A party may appeal this order to the Commission pursuant to OAR 860-014-0091.

SPECIAL PROTECTIVE ORDER
UM 1208

Scope of this Order-

1. This order governs the acquisition and use of “Confidential Information” submitted in response to Staff’s Request for Proposals for an Independent Evaluator.

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. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. A Commissioner or Commission Staff;
- c. A person qualified pursuant to paragraph 10. This includes parties and their employees.

Designation of Confidential Information-

4. A person responding to the RFP for an IE may designate information as confidential by placing the following legend on the information:

CONFIDENTIAL
SUBJECT TO SPECIAL PROTECTIVE ORDER
(IE RESPONSE)

To the extent practicable, the person shall designate as confidential only those portions of the document that fall within ORCP 36(C)(7).

5. A person 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.

Information Given to the Commission-

6. Confidential Information that is filed with the Commission or its staff shall be printed on yellow paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the

Commission. **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.

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

Disclosure of Confidential Information-

8. Parties desiring receipt of Confidential Information shall sign the Consent to be Bound Form attached as Appendix B. This requirement does not apply to the Commission Staff. 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 Administrative Law Judge.

9. Qualified persons may disclose Confidential Information to any other qualified person, unless the party desiring confidentiality protests as provided in Section 11.

10. To become a qualified person under paragraph 3(e), a person must:

- a. Read a copy of this Special 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 his/her 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. Such notification may be made via e-mail or facsimile.

11. All qualified persons shall have access to Confidential Information, unless the person desiring confidentiality protests as provided in this paragraph. The person desiring to restrict the 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 confer and attempt to resolve any dispute over access to Confidential Information on an informal basis before filing a motion with the Administrative Law Judge. If the dispute cannot be resolved informally, either party may file a motion with the Administrative Law Judge for resolution. Either party may also file a motion if the other party does not respond within five days to a request to resolve the dispute. A 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) until the issue is resolved.

Preservation of Confidentiality-

12. All persons who are given access to Confidential Information by reason of this order shall not use or disclose the Confidential 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. Disclosure of Confidential Information for purposes of business competition is strictly prohibited.

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 disclose Confidential Information only to other qualified persons associated with the same party.

Duration of Protection-

13. The Commission shall preserve the confidentiality of Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of Confidential Information.

Destruction After Proceeding-

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 this proceeding 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 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 person 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 therefor.

The person resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the party person 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 Administrative Law Judge on the motion.

SIGNATORY PAGE
UM 1208

I. Consent to be Bound-

This Special Protective Order governs the use of "Confidential Information" in this proceeding.

_____ (Party) agrees to be bound by its terms of this Special Protective Order.

By: _____
Signature & Printed Date

II. Persons Qualified pursuant to Paragraph 3(e) and Paragraph 10.

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

By: _____
Signature & Printed Date

By: _____
Signature & Printed Date

By: _____
Signature & Printed Date