ORDER NO. 10-136
ENTERED 04/08/10

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1480

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY Application for Deferral of Incremental Costs Associated with Biglow Canyon Wind Farm Phase 3 and SunWay 3, LLC Solar Project.	GENERAL PROTECTIVE ORDER

DISPOSITION: MOTION FOR PROTECTIVE ORDER GRANTED

On April 1, 2010, Portland General Electric Company (PGE) filed a Motion for Approval of Protective Order with the Public Utility Commission of Oregon (Commission). PGE states that good cause exists for the issuance of such an order to protect confidential business information and financial projections. Specifically, PGE states that some of the work papers supporting the application contain confidential business information, including power market price forecasts, and third party financial information that PGE is obligated to keep confidential. PGE adds that the public disclosure of such information could be detrimental to PGE and its customers.

I find that good cause exists to issue a General Protective Order, attached as Appendix A. The order permits the broadest possible discovery consistent with the need to protect confidential information. It shields no specific documents and makes no judgment as to whether any particular document is a trade secret or contains commercially sensitive information. Rather, the order adopts a process through which parties shall resolve discovery disputes that include sensitive information.

Under the terms of the order, any party may designate, as confidential, any information that it reasonably believes falls within the scope of ORCP 36(C)(7). Any such designation must be made in good faith, and be limited to only those portions of the document that qualify as a protected trade secret or other confidential research, development, or commercial information. Any other party may challenge the designation of any information as confidential. At that point, the designating party bears the "burden of showing that the challenged information falls within ORCP 36(C)(7)."

Confidential information shall be disclosed only to a "qualified person" as defined in paragraph 3 of the General Protective Order. Authors of the confidential material, the Commission or its Staff, and counsel of record for a party or persons directly employed by counsel are "qualified persons" who may review confidential information with no need to individually sign the General Protective Order. Other persons desiring confidential information must become qualified pursuant to paragraph 10.

To receive confidential information, however, all parties—with the general exception of Staff—must sign the Consent to be Bound Form attached as Appendix B. This includes the party seeking the issuance of the General Protective Order, because any party may designate information as confidential under this order.

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 General Protective Order. Such persons shall not use or disclose the information for any purpose other than the preparation for and conduct of this proceeding, 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 General Protective Order, attached as Appendix A, shall govern the disclosure of confidential information in this case.

Made, entered, and effective on APR 0 8 2010.

Michael Grant
Chief Administrative Law Judge

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

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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. An author(s), addressee(s), or originator(s) of the Confidential Information;
b. A Commissioner or Commission staff;
c. Counsel of record for a party;
d. A person employed directly by counsel of record; or
e. A person qualified pursuant to paragraph 10. This includes parties and their employees.

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 GENERAL 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.

Information Given to the Commission-

6. 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. 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 General 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. 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.

11. All qualified persons shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The party 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 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 therefor.

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 Administrative Law Judge 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 and 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.

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I. Consent to be Bound.

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

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

By: _____ _____
Signature & Printed Date

_____

II. Persons Qualified pursuant to Paragraphs 3(a) through 3(d).

_____(Party) identifies the following person(s) automatically qualified under paragraph 3(a) through (d).

_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date

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

I have read the General 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

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By: _____ _____
Signature & Printed Date

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By: _____ _____
Signature & Printed Date

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