

ORDER NO. 12 214

ENTERED JUN 06 2012

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1604

In the Matter of

CONSTELLATION NEWENERGY, INC.

2011 RPS Report.

GENERAL
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR PROTECTIVE ORDER GRANTED

On June 6, 2012, Constellation NewEnergy, Inc. (CNE) filed a motion for a general protective order with the Public Utility Commission of Oregon. CNE states that the order is needed to protect confidential customer information and confidential business plans and strategies. CNE states that the public release of this information could prejudice CNE and its customers. CNE adds that the order will expedite the discovery process.

I find that good cause exists to issue a general protective order, which is 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 about whether any particular document contains a trade secret or commercially sensitive information. Rather, the order adopts a process for resolving discovery disputes that include sensitive information.

The order permits any party to designate information as confidential if the party reasonably believes that the information falls within the scope of ORCP 36(C)(7). The confidential 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 information as confidential. The designating party bears the burden of showing that the challenged information is covered by ORCP 36(C)(7).

Confidential information may be disclosed only to a “qualified person” as defined in paragraph 3 of the general protective order. The authors of the confidential material, the Commission, Administrative Law Judges (ALJs), Commission Staff, and counsel of record for a party or persons directly employed by counsel are “qualified persons” and may review confidential information without individually signing the general protective order. Other persons wanting access to confidential information must become qualified under paragraph 10.

To receive confidential information, all parties except Commission Staff must sign the “consent to be bound” in section I of Appendix B. This includes the party that moved for issuance of the general protective order because any party may designate information as confidential under the order. By signing the “consent to be bound,” a party agrees to be bound by the terms of the general protective order and certifies that it has an interest in the proceedings that is not adequately represented by other parties to the proceedings.

Any person given access to confidential information must ensure compliance with the general protective order and must take reasonable precautions to keep confidential information secure. Without the written permission of the designating party, no person may use or disclose the information for any purpose other than participating in these proceedings. Questions regarding whether a particular person is a “qualified person” under the general protective order may be directed to the Administrative Hearings Division at (503) 378-6678.

ORDER

IT IS ORDERED that the General Protective Order, attached as Appendix A, governs the disclosure of confidential information in these proceedings.

Made, entered, and effective on JUN 06 2012.



Shani Pines
Shani Pines
Administrative Law Judge

A party may appeal this order to the Commission under OAR 860-001-0420.

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Scope of this Order:

1. This order governs the acquisition and use of Confidential Information in these proceedings.

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, addressee, or originator of Confidential Information;
- b. A Commissioner, Administrative Law Judge (ALJ), or Commission Staff;
- c. Counsel of record for a party;
- d. A person employed directly by counsel of record; or
- e. A person qualified under paragraph 10, including parties and their employees.

Designation of Confidential Information:

4. A party providing Confidential Information must inform other parties that the material has been designated confidential by placing the following legend on the material:

CONFIDENTIAL
SUBJECT TO GENERAL PROTECTIVE ORDER

To the extent practicable, the party may designate as confidential only the portions of the material covered by 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 must, when feasible, ensure that all copies of the information bear the above legend if requested by the designating party.

6. Any other party may challenge the designation of information as confidential by notifying the designating party. Once notified, the designating party bears the burden of showing that the challenged information is covered by ORCP 36(C)(7).

Information Given to the Commission:

7. Confidential Information filed or provided to the Commission or its Staff must be printed on yellow paper and placed in a sealed envelope or other appropriate container. **Only the portions of a document that fall within ORCP 36(C)(7) may be placed in the envelope/container.** The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. _____
AND CONTAINS CONFIDENTIAL INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED
PERSONS AS DEFINED IN THE ORDER.

Disclosure of Confidential Information:

8. To receive Confidential Information, all parties except Commission Staff must sign the “consent to be bound” in section I of Appendix B. Confidential Information may not be disclosed to any person other than a Qualified Person. When feasible, Confidential Information must 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 ALJ.

9. A Qualified Person may disclose Confidential Information to any other Qualified Person associated with the same party, unless the designating party objects under paragraph 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 current, past, and expected clients.

Counsel must deliver a copy of the signed statement including the information in (d) and (e) to the designating party and to all parties of record. The notification may be made by electronic mail or facsimile. A person qualified under paragraph 3(e) may not have access to Confidential Information sooner than seven days after the designating party receives a copy of the signed statement.

11. All Qualified Persons may have access to Confidential Information unless the designating party objects as provided in this paragraph. The designating party must provide written notice to the Qualified Person and counsel for the party associated with the Qualified Person as soon as the designating 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 ALJ. After receipt of the written notice as required in this paragraph, the specific Confidential Information may not be disclosed to the Qualified Person until the issue is resolved.

Preservation of Confidentiality:

12. Without the written permission of the designating party, any person given access to Confidential Information under this order may not use or disclose Confidential Information for any purpose other than participating in these proceedings. All Qualified Persons must take reasonable precautions to keep Confidential Information secure. Disclosure of Confidential Information for purposes of business competition is strictly prohibited.

A Qualified Person may reproduce Confidential Information to the extent necessary to participate in these proceedings. A Qualified Person may disclose Confidential Information only to other Qualified Persons associated with the same party.

Duration of Protection:

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

Destruction After Proceedings:

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 these proceedings 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 must destroy or return it to the designating party within 90 days after final resolution of these proceedings unless the designating party 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. Any party may request that the ALJ conduct a conference to help resolve disputes related to this protective order.

A party challenging the designation of information as confidential may file an objection with the ALJ that identifies the information in dispute and includes a certification that reasonable efforts to achieve an informal resolution have been unsuccessful. Within seven days of the objection, unless otherwise ordered by the ALJ,

the designating party must either remove the confidential designation or file a written response identifying the legal basis for the claim of confidentiality. The challenging party may file a written reply to any response within seven days. If the designating party does not timely respond to the motion, the Commission will remove the confidential designation from the challenged information.

Additional Protection:

16. If a designating party seeks additional protection for Confidential Information, the party may move for any of the remedies in ORCP 36(C). The motion must include:

- a. The parties involved;
- b. The exact nature of the information involved;
- c. The legal basis for the claim that the information is protected under ORCP 36(C)(7) or the Public Records Law;
- d. The exact nature of the relief requested;
- e. The specific reasons the requested relief is necessary; and
- f. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why these measures are insufficient.

Pending the Commission's ruling on a motion for additional protection, the information involved need not be released.

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III. Persons Qualified under Paragraph 3(e):

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: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____
 Paragraph 10(e) information also provided.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____
 Paragraph 10(e) information also provided.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____
 Paragraph 10(e) information also provided.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____
 Paragraph 10(e) information also provided.