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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UP 165

In the Matter of the Application of Portland General	)	
Electric Company for Approval to Sell Its 2.5 Percent	)	
Ownership Share of the Centralia Steam Electric	)	ORDER
Generating Plant to Avista Corporation.	)	

On August 17, 1999, Portland General Electric Company (PGE) requested the issuance of a Protective Order to govern the disclosure of confidential information in this docket. PGE makes two requests. First, it seeks the issuance of a Standard Protective Order to limit the use and disclosure of certain confidential customer information and confidential business plans and strategies. Second, it seeks additional protection for certain highly sensitive proprietary company information by limiting the disclosure of information related to bids in the Centralia auction solely to the Commission Staff. No party filed an objection to either request. The Commission addresses each separately.

**STANDARD PROTECTIVE ORDER**

PGE states that a rate case proceeding places a significant portion of the company's confidential and proprietary information within the scope of discovery. This confidential information includes such items as business plans and strategies.

PGE contends that the release of this confidential information could provide advantages to its competitors and impair its ability to enter into necessary contracts and honor confidentiality provision of existing agreements. Therefore, it requests the Commission issue a Standard Protective Order to govern the disclosure of confidential information in this docket.

**Disposition**

The Commission finds that good cause exists to issue a Standard Protective Order, attached as Appendix A. 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 confidentially fails or refuses to grant the request, the party seeking disclosure may file a motion to qualify the person by Commission order.

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.

#### **ADDITIONAL PROTECTION FOR HIGHLY SENSITIVE PROPRIETARY INFORMATION**

In addition to the Standard Protective Order, PGE seeks greater protection of certain information it deems highly sensitive. This information includes bids and related documents of winning and losing bidders in the recent auction for the sale of the Centralia Steam Electric Generating Plant.

PGE contends that the disclosure of this information to parties, even if subject to a Standard Protective Order, would be extremely harmful and prejudicial to the company and its co-owners and could result in irreparable and long-lasting economic harm. Therefore, it requests that the Protective Order in this proceeding contain a provision that bars disclosure of this information to any party other than Commission Staff.

PGE makes several arguments in support of its request. First, it states that disclosure of the information could harm the parties to the auction. The information sought in the Staff data request is the bids from both winning and losing bidders that was provided to PGE under strict confidentiality agreements. PGE believes that the bidders, including the winning bidder, had reasonable expectations that their submissions would be kept confidential. Thus, PGE is concerned that disclosure of the information could jeopardize the closing of this sale. In addition, according to PGE, disclosure would harm the competitive positions of PGE and the co-owners because the information includes business and financial material used in evaluating the sale. Furthermore, PGE notes that unwarranted disclosure of this information could result in liability, especially if the proposed sale does not close.

Second, PGE also expressed concern about the potential effect on future auctions of Oregon utility assets. The number or potential intervenors in this case can include customer groups, PGE competitors, the unsuccessful bidders, and the bidders' competitors. If these parties obtain copies of bids that were made under a promise of confidentiality, even if the subject to the Commission's standard protective order, no one can predict the possible effects on future auctions. Not only could disclosure affect future auctions in Oregon, but it could foreclose future participation of Oregon utilities in auctions held in other states.

Third, PGE asserts that even if the Commission does not approve the proposed sale, disclosure will have detrimental effects. If the proposed sale does not close and the property must be re-auctioned, disclosure of the short list bidders' bids will jeopardize bids in a later auction and will adversely affect ratepayers' desires to have the plant sell for the highest price possible.

Finally PGE claims that it is obligated to assure the confidentiality of information submitted to the sellers' professional advisors. Having access to advice from such companies is essential in conducting utility business. PGE will face severe obstacles in hiring them in the future, if they cannot rely on the protection of confidential information that is provided to them.

## **Disposition**

PGE's request for a protective order that limits disclosure of certain specified information to any party other than staff is granted. The Commission rarely issues protection beyond that granted in our Standard Protective Order.<sup>1</sup> Nonetheless, the provisions of ORCP 36C provide for greater protection if circumstances warrant. In this case, the circumstances make an exception to the standard protective order appropriate. In drawing this conclusion, the Commission balances the potential harm from disclosure of the material against any benefit which might accrue from that disclosure. The Commission notes that this ruling is based on the pleading filed by PGE and the fact that

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<sup>1</sup> See In the Matter of the Application of Portland General Electric for Approval of the Customer Choice Plan, UE 102, Order No. 98-163.

no party filed an objection to the request. This ruling is subject to reconsideration if circumstances change.

The Commission finds that PGE’s concerns about irreparable and long-lasting economic harm from disclosure of the information are persuasive. The Commission is persuaded by the potential impact of disclosure on PGE’s ability to participate in future auctions and to obtain professional advice.

The Commission emphasizes that this ruling is intended to be narrow and applies only to the specific information identified by PGE in its motion. PGE may designate this information as “Confidential – Subject to Protective Order – Staff Review Only.” As noted above, the Commission will reconsider this ruling if necessary.

**ORDER**

IT IS ORDERED that the request for a Standard Protective Order and provision that bars disclosure of certain specified information to any party other than Staff is granted.

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

\_\_\_\_\_  
**Ron Eachus**  
Chairman

\_\_\_\_\_  
**Roger Hamilton**  
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 of 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. A party may appeal this order to a court pursuant to ORS 756.580.

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.

SIGNATORY PAGE

UP 165

**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.

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Signature & Printed

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Party

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Date

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Signature & Printed

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Party

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Date

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Date

ORDER NO. 99-553

Party