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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UP 168

In the Matter of the Application of PacifiCorp for an)	
Order Approving the Sale of its Interest in (1) the)	
Centralia Steam Electric Generating Plant, (2) the)	ORDER
Ratebased Portion of the Centralia Coal Mine, and (3))	
related facilities for a Determination of the Amount of)	
and the Proper Ratemaking Treatment of Gain)	
Associated with the Sale; and for an EWG)	
Determination.)	

On September 22, 1999, PacifiCorp requested the issuance of a standard Protective Order to govern the disclosure of confidential information in this docket. On September 23, 1999, PacifiCorp filed a motion seeking 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

PacifiCorp states that Staff Data Requests 1-20 seek information that is deemed confidential, including, but not limited to, business plans and projected market prices for electricity.

PacifiCorp 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 confidentiality 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, PacifiCorp seeks greater protection of certain information it deems highly sensitive. The information requested by the Commission Staff includes bids of non-winning bidders in the recent auction for the sale of the Centralia Steam Electric Generating Plant and Mine.

PacifiCorp contends that the disclosure of this information to parties, even if subject to a Standard Protective Order, would be extremely harmful to the company and its co-owners. 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.

PacifiCorp 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 non-winning bidders that were provided to PacifiCorp under strict confidentiality agreements. PacifiCorp notes that unwarranted disclosure of this information could result in liability, especially if the proposed sale does not close.

Second, PacifiCorp argues that disclosure of the bidding documents may adversely affect future sales of utility property by jeopardizing the bidder's competitive positions in the industry. PacifiCorp states that without assurances of maintaining the confidential nature of the contents of bid documents, potential bidders may be reluctant to submit an offer to acquire property, resulting in the selling utility not being confident that the highest possible bid was submitted. PacifiCorp also asserts unwarranted disclosure could also harm the seller's competitive position, especially if the transaction does not close and the assets must go through another auction process.

Disposition

PacifiCorp'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.¹ 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 PacifiCorp and the fact that no party filed an objection to the request. This ruling is subject to reconsideration if circumstances change.

The Commission finds that PacifiCorp'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 PacifiCorp's ability to participate in future auctions.

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

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

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

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.