

In determining whether to grant additional protection, the Commission has historically balanced the potential harm which might occur from the disclosure of the information requested against the benefit which might accrue from the information being disclosed. *In the Matter of the Application of Portland General Electric Company for Approval of the Customer Choice Plan*, UE 102, Order No. 98-163 at 5. While the Commission infrequently provides for additional protection beyond that granted in a Standard Protective Order, the utilities' needs raised by restructuring has caused the Commission over the past several years to allow for additional protection of certain confidential and proprietary information in Commission proceedings. *See, e.g., In the Matter of the Revised Tariff Schedules Applicable to Electric Filed by PacifiCorp*, UE 111, Order No. 00-305; *In the Matter of the Application of Northwest Natural Gas Company for a General Rate Revision*, UG 132, Order No. 98-505; *In the Matter of the Application of Scottish Power and PacifiCorp*, UM 918, Order Nos. 99-106 and 99-293.

Position of the Parties

PacifiCorp seeks heightened protection for the disclosure of its Long-Term Fueling Plan and the Black Butte Coal Supply Contract. PacifiCorp claims that these documents contain "extremely commercially sensitive" information regarding coal and natural gas procurement strategies, and in particular, its long term fueling strategy for its Utah and Wyoming based power plants. PacifiCorp is concerned that the consultants' understanding of PacifiCorp's use of contracts and spot markets in fuel procurement gained in this case might be used by other persons who retain these same consultants to gain a competitive advantage.

ICNU objects to PacifiCorp's motion for two reasons: 1) the motion fails to meet the requirements for a heightened protective order, and 2) PacifiCorp would have too much control over the development of opposing parties' positions by restricting who could view the information. ICNU argues that its economic consultants, and not its legal counsel, are the ones with the necessary skills to analyze the requested information. Further, according to ICNU, it is merely conjecture on PacifiCorp's part that consultants might use this information to gain a competitive advantage.

ICNU is willing, however, to have only the previously identified ICNU witnesses view the documents. ICNU contends that this compromise limits the number of individuals who see the material while giving parties an opportunity to present their positions.

Discussion

We addressed a similar request in *In the Matter of the Revised Tariff Schedules Applicable to Electric Service filed by PacifiCorp*, UE 111, Order No. 00-305, issued June 9, 2000. In that instance, PacifiCorp requested heightened protection for documents produced in response to date requests regarding wholesale market trading activities and fuel procurement documentation. We held that PacifiCorp had identified a

discrete number of documents for which it sought protection, and that it sufficiently explained the risk to the company if such sensitive information was disclosed to individuals retained by its competitors. Further, we established a procedure for an order to compel disclosure if a party believed the company was unreasonably refusing to consent to disclosing information.

PacifiCorp has met its burden for obtaining a heightened protective order. The data requested involves long term fueling strategies for Utah and Wyoming based power plants, including information regarding coal leases, terms and conditions of coal contracts, and projected usage of coal over the lifetime of its plants. The information requested is highly sensitive information, and made even more so by the current competitive market. We note that one of the documents being requested, the Central Utah Mining and Fueling Strategy, is the same document that was granted heightened protection in Order No. 00-305. We see no reason to reach a different conclusion in this case.

Finally, we reiterate our previous statements in Order No. 00-305. PacifiCorp should not unreasonably withhold its consent to allow information to be disclosed to others. If a party believes that consent is being unreasonably withheld, then that party may move for an order compelling disclosure. This ruling does not reflect in any way on the integrity of any attorney or other person involved in this case. Due to the difficulty in "unringing the bell" through an inadvertent disclosure, we believe that PacifiCorp should be able to monitor the disclosure of these confidential documents.

ORDER

IT IS ORDERED that the request for Additional Protection under Protective Order, filed by PacifiCorp, 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 in 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(2). A party may appeal this order to a court pursuant to applicable law.