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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1071

In the Matter of the Application of PORTLAND )  
GENERAL ELECTRIC COMPANY ) MODIFIED  
for an Order Approving the Deferral of Hydro ) PROTECTIVE ORDER  
Replacement Power Costs. )

**DISPOSITION: MODIFIED PROTECTIVE ORDER ISSUED**

On May 30, 2003, Portland General Electric Company (PGE) moved for issuance of a Modified Protective Order in this docket. PGE asserts that material included within the scope of discovery in this proceeding contains confidential and proprietary information. PGE states that the release of confidential information could provide advantages to its competitors and impair its ability to enter into necessary contracts and honor confidentiality provisions of existing agreements.

PGE asks that the Commission issue a Modified Protective Order in lieu of the Standard Protective Order. The Modified Protective Order contains improvements to the Standard Protective Order designed to facilitate the exchange of confidential material and to reduce disputes regarding the distribution of such material. The Modified Protective Order has been accepted by the Commission in many dockets. PGE includes a Proposed Order with its motion.

I find that good cause exists to issue the Modified Protective Order requested by PGE and attached as Appendix A. OAR 860-012-0035(1)(k). 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.

Subsection (e) paragraph 3 sets 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.

**The confidentiality of confidential information shall be preserved for a period of two years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality.**

To assist the Commission and parties in determining whether an individual is entitled to review confidential information, counsel for each party shall submit a list of “qualified persons” associated with that party. Counsel shall submit the list of names at the time it files with the Commission a copy of the signed “consent to be bound.” A copy of the list shall be served on all parties to the case. If the party desiring confidentiality disagrees with the designation of any individual as a qualified person, 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 confidentiality may file a motion seeking exclusion of the individual from the list of qualified persons.

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.

**ORDER**

IT IS ORDERED that:

1. The Modified Protective Order, attached as Appendix A, shall govern the disclosure of confidential information in this case.
2. Each party shall submit a list of “qualified persons” associated with that party at the time it files a copy of the signatory page set forth in Appendix B.

Made, entered, and effective this 9th day of June, 2003, pursuant to OAR 860-012-0035(1)(k).

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Ruth Crowley  
Administrative Law Judge

This order may be appealed to the Commission pursuant to OAR 860-014-0091. The appeal should be in the form of a motion. *See* OAR 860-013-0031.

APPENDIX A

MODIFIED 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; or
- e. Persons qualified pursuant to paragraph 8.

**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. Parties desiring receipt of confidential information shall sign the Consent to be Bound Form attached to the end of this Appendix A. 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. To preserve the ability to protect confidential information, no party shall share confidential information with qualified person(s) associated with another party or with Commission Staff except as expressly allowed by the party desiring confidentiality or by order of the presiding officer.

8. Before reviewing confidential information, a person qualified under paragraph 3(e) 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;
- c. Date the statement;
- d. Provide his or her 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. 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.

9. Subject to paragraphs 7 and 8, all qualified person(s) shall have access to confidential information, unless the party desiring confidentiality protests as provided in this paragraph. The party desiring to restrict 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 persons(s) as soon as the party becomes aware of reasons to restrict access. The parties must promptly meet and attempt to resolve any dispute over access to confidential information on an informal basis before filing a motion with the presiding officer. If the dispute cannot be resolved informally, either party may file a motion with the presiding officer for resolution. Any such 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) pending informal resolution between the parties or the presiding officer's or Commission's ruling on a 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.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce confidential information to the extent necessary for preparation and conduct of this proceeding. Qualified persons may not disclose confidential information to anyone who is not a qualified person.

#### **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 printed on yellow paper, 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 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 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; 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.

SIGNATORY PAGE

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**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.

\_\_\_\_\_  
Signature & Printed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature & Printed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Party