

ISSUED July 13, 2004

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1121

In the Matter of)
)
OREGON ELECTRIC UTILITY)
COMPANY, LLC, et al.,) MEMORANDUM
)
Application for Authorization to Acquire)
Portland General Electric Company.)

DISPOSITION: MOTION TO CERTIFY WITHDRAWN

On March 10, 2004, a standard protective order was issued in this case. On April 21, 2004, Oregon Electric Utility Company, LLC, and associated applicants (Applicants) moved for additional protection for certain information. Specifically, Applicants sought protection of financial models, prospectuses for Texas Pacific Group (TPG) entities with a financial interest in the purchase of Portland General Electric Company (PGE), names of all partners in associated TPG entities, copies of all minutes of any group that discussed the proposed PGE purchase, and studies or analyses conducted related to the PGE purchase. Applicants had provided this information to Staff, but sought to deny providing the information in response to a request from Citizens' Utility Board (CUB) and Industrial Customers of Northwest Utilities (ICNU). *See* ALJ Ruling, UM 1121, issued May 28, 2004. CUB and ICNU filed a joint opposition to the motion on May 5, 2004,¹ Applicants filed a reply on May 14, 2004.

A ruling was issued on May 28, 2004. The ruling stated that the information was discoverable under the standard protective order. The ruling further noted that the dispute was only in regards to CUB and ICNU's request, and that Applicants' generalized concerns regarding those parties' abilities to keep protected material confidential were misplaced. *See* ALJ Ruling at 4. The ruling directed the parties to negotiate a method of disclosure prior to the June 18, 2004, status conference.

¹ The City of Portland also filed a brief, addressing the distinction between Staff and other parties. That argument was rejected. *See* ALJ Ruling, UM 1121, at p 1 n 1, issued May 28, 2004. From the documents that were filed, we have no record that the City had a dispute with Applicants regarding obtaining the disputed information.

On June 7, 2004, Applicants moved to certify the ALJ's ruling to the Commission. At the June 18, 2004, status conference, ICNU and Applicants stated that they were still working out a method of disclosure and had settled many of their differences. However, the parties wanted to maintain the motion to certify in case they did not reach a complete agreement. On June 22, 2004, ICNU filed a response to the motion to certify. On that same date, the Utility Reform Project (URP) also filed a response, clarifying that it too had requested the same information that CUB and ICNU had requested and attaching a letter from Applicants proposing a method of disclosure.

Applicants and ICNU placed a conference call to me on June 21, 2004, requesting that the motion be held in abeyance to provide them additional time to work out a method of disclosure. Together, we set a date of July 1, 2004, for a status report on the negotiations. On July 1, 2004, ICNU called and asked for a one-day extension for the status report. That request was granted.

On July 2, 2004, Applicants and ICNU again placed a conference call and reported that they had worked out a method of disclosure acceptable to CUB, ICNU, and Applicants. Applicants withdrew their motion and to memorialize the agreement in a letter filed July 7, 2004. ICNU reserved the right to reopen the issue of disclosure if, for instance, it finds it necessary to raise the identity of investors during the proceeding. Because that issue was not decided in the initial ALJ ruling of May 28, 2004, I decided that a new motion with additional briefing would be necessary if the issue arose. On July 7, 2004, Applicants filed a letter withdrawing its motion to certify.

Also on July 2, 2004, URP filed a letter stating that it "responded to the Application for Certification and also requested the same information from the Applicants." URP also stated that it had not been provided a list of investors in the two TPG funds involved in the PGE purchase, and that "Applicants have not attempted to contact URP on the subject of the Application for Certification." URP has not indicated that it has attempted to work with Applicants to resolve its discovery dispute. The protective order in effect in this case,² and the governing administrative rules,³ require a party to first negotiate with the opposing party before filing a motion to compel. URP's initial filing shows that Applicants sent a proposal for disclosure, but URP does not state how it responded or that it made further attempts at negotiations. If URP has a discovery dispute, it must first contact Applicants and attempt to resolve the dispute before filing a motion to compel in accordance with Commission rules.

Dated at Salem, Oregon, this 13th day of July, 2004.

Christina M. Smith
Administrative Law Judge

² See Order No. 04-139 at ¶ 11.

³ See OAR 860-014-0070(2).