

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1121

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

DISPOSITION: MOTION FOR ADDITIONAL PROTECTION UNDER THE STANDARD PROTECTIVE ORDER DENIED; PARTIES DIRECTED TO COLLABORATE ON METHOD OF DISCLOSURE

On March 10, 2004, a standard protective order was issued in this case. *See* Order No. 04-139. That order outlines a process by which a person can become qualified, paragraph 8; confidential information can be safely disclosed, paragraph 9; and objections to requests can be raised, paragraph 11. In this instance, Oregon Electric Utility Company, et al. (Applicants) have objected to a request by Citizens' Utility Board (CUB) and Industrial Customers of Northwest Utilities (ICNU) for certain information, and Applicants have moved for additional protection. In particular, Applicants seek special protection for information provided in response to Staff's Data Requests 1, 5, 9, 24, and 68.¹ This motion is denied, but we note that Applicants retain the right to object to subsequent requests for information under the protective order as those requests arise.

Data Request #1: Financial Models

Applicants created 48 model runs in an attempt to predict what return Portland General Electric Company (PGE) will provide over time. CUB and ICNU requested the software copy of the financial model. Applicants provided 20 page summaries of each of the 48 model runs and offered to provide the full-length 80-page report of each model run. In addition, Applicants offered to create a reasonable number

¹ The City of Portland also opposed Applicant's motion because it seeks to distinguish between Staff and other parties. Such a distinction is not inappropriate. *See, e.g.*, UE 115, UE 116, Order No. 01-592 at 7 n 6 ("An agency is not a party to its own proceedings, but of course has the right to present evidence and testimony."); OAR 860-012-0015 (Staff is not a party for purposes of ex parte contact rule). That distinction is not the deciding factor here.

of new scenarios using inputs and assumptions chosen by CUB and ICNU. However, Applicants maintain that the financial model itself is too valuable and the danger of copy by software is too great for it to be released.

CUB and ICNU want to be "able to analyze the formulas and logic underlying the model and replicate the analysis performed by the user. Hardcopy summaries of the specific model runs do not provide the opportunity to gain that understanding or perform such analysis." CUB and ICNU also note that, in the past, the Commission has found that financial models may be protected under the standard protective order, but are still discoverable. *See Citizens' Utility Board v. Public Utility Commission*, 128 Or App 650 656-57, *rev den*, 320 Or 272 (1994). Further, CUB and ICNU point out that Applicants refer back to the financial model to answer other data requests from Staff, such as "the pro forma balance sheet that includes all property that is to be transferred to the Company from Enron on the closing date." Applicants responded with a reference to the financial model, which they have not yet provided.

I agree with CUB and ICNU that the financial model is discoverable. The financial model has been provided in the past, for instance in UM 261, affirmed in *Citizens' Utility Board*, 128 Or App 650. In that case, it appeared to be discoverable under the standard protective order. In UE 116, the utility agreed to load the computer model on to a computer that would be loaned to CUB and ICNU. *See* Order No. 02-212, Appendix C at 3. Other methods for provision of the financial model under a protective order may also be available. The parties are directed to come up with a mutually agreeable solution.

Data Request #5: Private Placement Memoranda (PPMs) for Texas Pacific Group (TPG) entities with a vested financial interest in the proposed transaction

The Private Placement Memoranda (PPMs) contain information related to the return on other investments and the terms between TPG partners and investors for the two investment funds that will be involved in the proposed PGE transaction. Applicants argue that this information is not relevant and disclosure to TPG competitors could severely impair TPG's ability to compete. Applicants state that TPG is very careful in revealing this information even to its own clients.

Applicants propose redacting certain information before providing the PPMs, providing a summary of the redacted information, or allowing an Administrative Law Judge to perform an *in camera* inspection of the information to determine whether it should be produced. According to Applicants, only 34 pages of information are really at issue.

CUB and ICNU dispute Applicants' concern that TPG competitors could receive confidential information under disclosure in this docket and argue that this information could lead to discoverable information. CUB and ICNU argue that the information is necessary, because "the investment terms and rates of return that TPG expects from its investment is just as important as how it will implement this business plan with respect to PGE." CUB and ICNU argue that TPG's experience with other investments has a direct bearing on its expectations in relation to PGE.

Applicants made this information relevant when they touted TPG's established "reputation for investing in high quality business across many industries, some of which have temporarily been in troubled or transitional circumstances." *See* Application at 10. The application made other representations about companies in which TPG had invested and provided "Summaries of Select TPG Investments" in Oregon Electric/Exhibit 13. To the extent that Applicants point to TPG's experience in working with companies in "troubled or transitional circumstances" as an indicator for its conduct as an investor in PGE, the information is discoverable and the parties should collaborate on a method of disclosure under the protective order.

Data Request #9: Identities of all partners of associated TPG entities

Applicants move to protect the names of limited partners, or investors, in TPG entities. They argue that its list of investor-clients is confidential and disclosure could lead to competitive harm. Further, because investor-clients have no vote or other control over daily operations, Applicants argue that the list is not relevant to this proceeding. Applicants have proposed summarizing the nature of its investors and answering specific questions about their investors that are related to this proceeding.

CUB and ICNU replied that Applicants have touted local investment, in particular Oregon Public Employees' Retirement System (OPERS) investment in the funds that will finance the proposed PGE transaction and that Applicants cannot now claim that other investors are not relevant. Because Applicants are touting transparency and local accountability as the net benefit, then, CUB and ICNU argue, they should be allowed to examine and understand who are the investors in TPG.

Again, Applicants raised the issue of the identity of its investors in its application. Specifically, Applicants cited the participation of OPERS, stating that it "is the single largest investor in TPG-managed funds. As a result, pensioners in Oregon are among the people who will benefit from TPG's investments." *See* Application at 9-10. A pie chart indicating the broad background of investors was attached as Oregon Electric/Exhibit 12. Again, to the extent that Applicants have raised the issue of the identity of its investors and whether they are from Oregon, the information is discoverable, and the parties should find a way to disclose the requested information under the protective order.

Data Requests #24 and 68: Minutes of any governing group in which the proposed transaction was discussed; and studies or analyses conducted for or by Applicants, including studies related to value-creation potential and potential risks and benefits from reorganization

Applicants acknowledge that the minutes and other materials are relevant to the parties' analyses of TPG's proposed transaction of PGE, but express concern that the information is highly sensitive and relate to the inner workings of TPG.

Applicants have proposed that this information be viewed in a data room provided by the Applicants. Qualified persons could make notes but not copies of the protected information. In addition, Applicants have offered to work with a party who wanted to introduce a particular portion of the materials into the record of this proceeding.

CUB and ICNU assert that the data room is unworkable because they anticipate retaining multiple expert witnesses who may be from outside Oregon, thereby making the experts' access to the documents difficult. Applicants counter that they have offered to make special arrangements to accommodate potential expert witnesses.

All parties agree that the information is discoverable. Applicants are reluctant to provide the information because the large number of intervenors and qualified persons under the protective order make it more possible that sensitive information could be revealed. However, Applicants do not make a specific objection to CUB and ICNU receiving this information, and at this time, those are the only parties requesting the information. The parties are directed to try again to work out a solution to disclosure of the information under the protective order.

RULING

The parties shall agree on a method of disclosure of discoverable information under the protective order in place no later than the status conference scheduled for June 18.

If an agreement cannot be reached within that time frame, the parties may file a letter in this docket stating each party's proposed alternative solutions, and a method of disclosure will be chosen for the parties.

Dated at Salem, Oregon, this 28th day of May, 2004.

Christina M. Smith
Administrative Law Judge