

Electric Utility Company, LLC, pursuant to Sections 105 and 363 of the Bankruptcy Code. On information and belief, no motion to stay the Order has been filed. Therefore, the Order is final. *In re Ginther Trusts*, 238 F.3d 686, 689 (5th Cir. 2001), *cert denied* 534 U.S. 814, 122 S.Ct. 39 (2001); *In re Sax*, 796 F.2d 994, 998 (7th Cir. 1986). Movant is not, and by virtue of this Order cannot become, a party to these consolidated proceedings. See February 5, 2004, Order at ¶¶ 6, 12.

By agreement dated April 18, 2001, Arthur Andersen LLP agreed to perform services for Portland General Electric Company. That agreement provides, in part:

In connection with the engagement, each party will have access to confidential information (including financial information, tools and methodologies) made available by the other. Each party shall protect such confidential information in the same manner as it protects its own confidential information of like kind, which shall be at least a reasonable manner. Andersen shall maintain the confidentiality of such information in accordance with applicable professional standards. Andersen may retain, subject to the terms of this Agreement, copies of Client's confidential information for internal recordkeeping purposes and for compliance with applicable professional standards. If Andersen receives a subpoena or other validly issued administrative or judicial demand requiring it to disclose Client's confidential information, Andersen shall provide prompt notice to Client of such demand. Andersen shall thereafter be entitled to comply with such demand to the extent permitted by law.

February 5, 2004, Order at ¶ 4.

The documents at issue were either provided to Arthur Andersen or subsequently generated by Arthur Andersen pursuant to that agreement. However, Arthur Andersen gave Movant no prior notice of any demand for production nor of its forwarding documents to the Document Depository established in these consolidated proceedings.

II. Statement of the Issue

A. Statement of the Issue

Whether Movant's confidential, privileged, and proprietary information deposited in the Document Depository by Arthur Andersen should be presently protected from public disclosure subject to further order of the Court.

B. Standard of Decision

"Rule 26(c), by its own language, and the case law, provide that the burden is on the party wishing to obtain a protective order to show that good cause exists for the order. To establish that good cause exists that 'party must show that a specific prejudice or harm will result if no protective order is granted.' *Phillips v. General Motors Corp.*, 37 F.3d 1206, 1210-11 (9th Cir. 2002); . . .

[I]n cases with large numbers of documents the district or magistrate judge is often not in a position to make the good cause determination on a document by document basis . . . the party seeking protection must in good faith describe a 'properly demarcated category of legitimately confidential information.' ." citing *Citizens First Nat'l Bank of Princeton v. Cincinnati Insurance Co.*, 178 F.3d 943, 945-46 (7th Cir. 1999).

Order on Plaintiff's Motion to Preclude the filing or Production of Documents Subject to a Protective Order, entered December 19, 2002 (Docket entry number 1192 in *Newby*).

Any protective order must make explicit that any party and any interested member of the public can challenge the secreting of particular documents. *Citizens First Nat'l Bank*, *supra*.

III. Summary of the Argument

An order approving the sale of the stock of Portland General Electric Company was signed by Judge Gonzalez on February 5, 2004. Movant acts to preserve its confidential information and to mitigate any damage incurred as a result of Arthur Andersen producing Movant's confidential information to the Document Depository

without prior notice to Movant. Unless this protection is granted, Movant may suffer harm which could constitute a material adverse change of its economic condition and jeopardize the value of the transaction approved by Judge Gonzalez.

As required by law, the right of any party and any interested member of the public to challenge the secreting of particular documents is preserved in the form of order granting the requested relief which accompanies this motion.

IV. Argument

The Court has a duty and the broad discretion to protect a party with a protective order on a showing of good cause. *See* Fed. R. Civ. P. 26(c); *Miscellaneous Docket Matter 1 v. Miscellaneous Docket Matter 2*, 197 F.3d 922, 925 (8th Cir. 2001). To determine good cause, the court must weigh the movant's privacy interests in the information and its burden of producing the information against the right of the non-movant and the public to obtain the information. *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34-36, 104 S.Ct. 2199, 2208-09 (1984).

As shown by the attached affidavit, the Arthur Andersen files generated pursuant to the April 18, 2001, agreement between Arthur Andersen and Movant were generated with the expectation of confidentiality. (Mabinton Affidavit at ¶ 10). Moreover, Arthur Andersen failed to provide prior notice to Movant of the requests for production or the forwarding of documents to the Depository. *Id.* The right of Movant to act in the circumstances to preserve the confidentiality of its confidential information can scarcely be questioned. Moreover, good cause for protection is aptly demonstrated by the facts that (1) the purchase Agreement for the stock of Portland General Electric Company has been approved and the Seller authorized to consummate the sale; and (2) the separate

accounting treatment of Portland General Electric Company which was required by the 1997 merger with Enron Corp. and which has been observed at all times subsequent thereto. (*Id.* at ¶¶ 5-9). The Court should therefore act to protect Movant's confidential information in order to preserve the value of the transaction from any potential negative impact occasioned by disclosure or dissemination of Movant's confidential information. This motion is expressly made, as required by law, without prejudice to the right of any interested party or any member of the public the secreting of any particular document.

V. Conclusion

For these reasons, Movant asks the Court to issue an order in the form attached protecting Movant from the disclosure of their confidential, privileged, or proprietary information by Arthur Andersen to the Document Depository, subject to further order of the Court.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

Pursuant to Rule 5(d), Fed. R. Civ. P., I hereby certify that the foregoing motion has been served pursuant to Rule 5(b), Fed. R. Civ. P., addressed as follows:

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of which Portland and Salem are the largest. PGE's service area population is approximately 1.5 million, comprising about 44% of the state's population. PGE has over 2,700 employees.

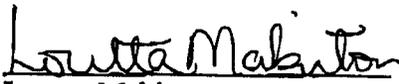
4. PGE is regulated by the Oregon Public Utilities Commission ("OPUC"), and certain aspects of PGE's business are regulated by the Federal Energy Regulatory Commission ("FERC").
5. On July 1, 1997, less than seven (7) years ago, Portland General Corporation ("PGC"), PGE's then parent company, merged into Enron with Enron continuing as the surviving corporation. PGE continued its separate existence even though Enron owns all of PGE's common stock. However, PGE's capitalization also included publicly traded cumulative preferred stock and debit securities registered on the New York Stock Exchange. As a separate corporation, PGE owns or leases the assets used in its business, and as discussed more fully below, PGE's management, which is separate from Enron's, is responsible for PGE's day to day operations.
6. Following negotiations, on November 8, 1999, Enron announced that it had entered into a purchase and sale agreement to sell PGE to Sierra Pacific Resources ("Sierra"). The closing was delayed by the effect of events in the electric industry in California and Nevada and their impacts on Sierra. Subsequently, on April 26, 2001, Enron and Sierra announced that they had entered into a mutual agreement to terminate their purchase and sale agreement for PGE. Shortly thereafter, Enron and NW Natural began negotiations on a Stock Purchase Agreement. The agreement was signed on October 5, 2001 and provides for the acquisition by NW Natural of all of the issued and outstanding common stock of PGE. The transaction was terminated by the mutual agreement of NW Natural and Enron shortly after Enron filed for bankruptcy court protection. On November 18, 2003 Enron and Oregon Electric Utility Company announced that they had reached a definitive agreement for the sale of all of PGE's common stock by Enron. The bankruptcy court approved that sale on February 5, 2004. Thus, after acquiring PGE less than seven years ago, Enron has for almost the past five years dealt with PGE as an on-the-block asset, separately managed and subject to the scrutiny of potential purchasers and regulators.
7. Although Enron owns all of the common stock of PGE, PGE is not the alter-ego of Enron. Moreover, PGE's customers, suppliers and creditors do not rely upon the credit or financial condition of Enron as if PGE and Enron were one business entity. PGE's business, assets and liabilities are segregated and ascertainable from Enron's. PGE maintains separate financial statements, and keeps separate books and records from Enron. PGE does not commingle its assets and business functions with Enron's, and maintains separate bank accounts. PGE's corporate office is in Portland, Oregon, while Enron is headquartered in Houston, Texas. PGE's management was, and is, independent of Enron's management. The day to day operations of PGE are managed by PGE's local officers.

8. The PGC/Enron Merger was approved by the Oregon Public Utilities Commission in June 1997. See OPUC Order No. 97-196. The OPUC imposed conditions it determined enhanced "the means by which the Commission can ensure that Enron does not weaken PGE's financial condition." The Order imposed many conditions regarding the Enron/PGE relationship. Condition 3 requires PGE to maintain its own accounting system, separate from Enron's accounting system. It also requires all PGE financial books and records to be kept in Portland, Oregon. Condition 5 requires PGE to maintain separate debt and preferred stock ratings. Condition 12 requires PGE and Enron to comply with all State and Commission requirements regarding affiliated interest transactions. Condition 14 prohibits Enron from subsidizing its activities by allocating to or directly charging PGE expenses not authorized by the Commission. Condition 17 prohibits PGE from sharing with marketing personnel of Enron or other affiliates information regarding PGE's retail customers.
9. Furthermore, regulatory and contractual protections restrict Enron's access and control over PGE assets and operations. Pursuant to FERC orders PGE observes certain FERC Code of Conduct requirements in dealings with Enron and its affiliates. Under Oregon law and specific OPUC merger conditions imposed on Enron during its acquisition of PGE, Enron's access to PGE cash or assets (through dividends or otherwise) is limited. Under the conditions, PGE cannot make any distribution to Enron that would cause PGE's equity capital to fall below 48 percent of total PGE capitalization (excluding short-term borrowings) without Commission approval. The merger Order also contains notification requirements regarding dividends and retained earnings transfers to Enron. Lastly, the Order requires that PGE maintain its own accounting system as well as separate debt and preferred stock ratings. PGE maintains its own cash management systems and finances itself both on a short term and long term basis separate from Enron.
10. Arthur Andersen Engagment Letter: The PGE documents that Arthur Andersen has deposited in the Document Depository were either provided to AA by PGE or created by AA pursuant to the April 18, 2001 Engagement Letter between PGE and Arthur Andersen. I have conducted a reasonable inquiry of the appropriate personnel within PGE, and determined to the best of PGE's knowledge that no notice was received from AA as required by Paragraph 4 of the Engagement Letter, a true and correct copy of the text of which is set out in the memorandum accompanying PGE's Motion for Protective Order as to Documents Produced by Arthur Andersen.
11. PGE recently received notice that its confidential information was included in documents produced by Arthur Andersen to the Document Depository. PGE has identified such confidential information by specific file name and Bates numbers. PGE was also informed of the February 15, 2004, agreed date for filing a motion for protection as to the Arthur Andersen production and has diligently sought to meet that deadline in order to preserve confidentiality and mitigate any damage which may otherwise occur.

12. Disclosure or dissemination of this confidential information may cause harm to the value of PGE in ways or amounts not presently foreseeable. Enron's ownership of all of PGE's common stock is a significant asset of the Enron estate. Harm to the value of PGE would result in harm to the Enron estate. Every potential for harm must be avoided to protect value pending consummation of the sale of stock to Oregon Electric Utility Company.

FURTHER AFFIANT SAITH NOT.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 17th day of February, 2004.


Loretta Mabinton