STATE OF MAINE
PUBLIC UTILITIES COMMISSION

MAINE PUBLIC UTILITIES COMMISSION
Investigation of Bangor Hydro-Electric
Company's Stranded Cost Revenue Requirement

Docket No. 2001-239

BANGOR HYDRO-ELECTRIC COMPANY
Request for Accounting Order (PERC Settlement
Agreement

Docket No. 2004-5

BANGOR HYDRO-ELECTRIC
COMPANY MOTION FOR
PROTECTIVE ORDER NO. 1
(Litigation Strategy)

By Motion dated March 3, 2004, Bangor Hydro-Electric Company ("the Company" or "BHE") requested Protective Order No. 1 to protect the confidentiality of information and communications regarding strategy and/or risk assessment in connection with possible litigation relating to PERC overpayment and underpayment disputes.

Based on the foregoing, the Commission finds that the confidential information for which protection is being sought is properly subject to protection.

Accordingly, it is

ORDERED

1. That information and communications regarding strategy and/or risk assessment in connection with possible litigation between BHE and PERC relating to PERC overpayment and underpayment disputes shall constitute confidential information, and such information shall be considered "Designated Confidential Information" for purposes of this Order.

2. That all Designated Confidential Information shall, unless removed from the coverage of the Order as provided in Paragraph 3 below, be and remain confidential. Such Designated Confidential Information shall neither be used nor disclosed for any purpose other than the purposes of preparation and conduct of these proceedings, and then solely in accordance with this Order. No person to whom access to Designated Confidential Information is accorded pursuant to Paragraph 4 of this Order shall disclose or reveal, directly or indirectly, the content of the Designated Confidential Information to others except as provided in Paragraph 4.

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3. That the parties to whom such Designated Confidential Information is furnished may challenge designation of such documents or other information as confidential by motion to the Commission and upon reasonable prior notice to the parties and an opportunity for hearing. In considering such motion, the usual burdens of proof and production shall apply and no additional presumption shall be given as a result of the prior designation of material as Confidential Information. Upon the entry to an order granting such a motion, the provisions and restrictions of this Order shall cease to bind any party or other person with respect to such documents or information as the Order granting the motion shall expressly and clearly remove from the coverage of this Order.

4. That, unless the Order is modified, access to Designated Confidential Information shall be limited to (i) Commission members, members of the Commission Staff and their consultants; (ii) the Public Advocate, counsel and their consultants; (iii) a stenographer or reporter recording any hearing in connection with this proceeding; (iv) counsel for or any other representative of BHE; and (v) counsel and consultants only for all parties, provided that such counsel and consultants shall agree to use the Designated Confidential Information solely for purposes of this proceeding and not disclose the information to any other person and provided further, the attorney does not have "a personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information." 35-A M.R.S.A. §1311-A(1)(D)(2)].

5. That all materials claimed by BHE to be Designated Confidential Information under the terms of this Order shall be clearly marked "confidential" by BHE. In the case of documents, each page of any such document shall be stamped "confidential" in bold lettering in the upper right hand corner of each page, including the cover letter. Any document or portion thereof not clearly and conspicuously marked "confidential" in bold lettering shall not be protected under the terms of this Order. Faxed materials should be marked as any other document. With regard to other media, diskettes should be marked "confidential" on the outside and, to the extent possible, each file on the diskette should be similarly identified. Any person or party subject to the terms of this Order who receives unmarked documents or materials which he/she believes BHE intended to be protected by the terms of this Order, and that would have been protected if marked in accordance with this paragraph, shall make a good faith effort to notify BHE of this fact and to avoid use of such documents or materials in a manner inconsistent with protection of such material under this Order.

6. That no copies of Designated Confidential Information shall be circulated to persons other than those persons who are authorized under Paragraph 4 of this Order to obtain Designated Confidential Information. Documents offered in evidence may be copied as necessary for that purpose. Persons authorized under Paragraph 4 also may take such notes with regard to the Designated Confidential Information as may be necessary solely for the purposes of these proceedings. Such notes shall also be treated as

Designated Confidential Information and shall not be used for any purposes other than the preparation and conduct of these proceedings.

7. That the restrictions upon, and obligations accruing to, persons who become subject to this Order shall not apply to any Designated Confidential Information. if the Commission rules, after reasonable notice and hearing, that such Designated Confidential Information was publicly known at the time it was furnished or has since become publicly known through no fault of the receiving party.

8. That where any party wishes to introduce any Designated Confidential Information into the record, it shall give BHE sufficient notice so that BHE can move that any reference to Designated Confidential Information be made in camera, attended only by persons authorized to have access to such information under paragraph (4) above. Where reference to Designated Confidential Information is required in pleadings, briefs, other legal documents, or argument, such reference shall be by citation of title or exhibit number only or by some other non-confidential description. In such circumstances, counsel shall preserve the confidentiality of material in the sealed record. If counsel shall include Designated Confidential Information in pleadings, briefs, other legal documents, or arguments, that portion of such documents or that portion of the transcript of such argument containing Designated Confidential Information shall be maintained under seal.

9. This Order does not preclude any party from (a) objecting under the Maine Rules of Evidence to the admissibility of any Designated Confidential Information or (b) objecting, on any substantive or procedural ground, to any subsequent data request or other request for information.

10. That a Party providing Designated Confidential Information may provide to each person having access to Designated Confidential Information a copy of this Order and require each person to agree in writing to the terms hereof prior to obtaining access to the Designated Confidential Information.

11. That any Designated Confidential Information made part of the record in any proceeding before the Commission, including portions of the transcript of any hearing containing the content of the Designated Confidential Information, shall remain in the possession of the Commission, under seal, and subject to the protective requirements of this Order, unless the Commission or its authorized presiding officer shall otherwise order.

12. That the Commission may draw upon all Designated Confidential Information in the record in the deliberation of any decision or order that it may issue, but the Commission will avoid public disclosure or the reproduction in its decision of any Designated Confidential Information.

13. That should any appeal of or other challenge to the Commission's decision in this proceeding be taken, any portions of the record that have been sealed in accordance with Paragraph 8 above shall be forwarded to the courts of this State in accordance with applicable law and procedures, but under seal and so designated in writing for the information of the court.

14. That this Order may be modified on motion of any party or on the Commission's own motion upon reasonable prior notice to the parties and an opportunity for hearing.

15. That within forty (40) days after the Commission reaches a final decision in this proceeding, each party to whom Designated Confidential Information has been made available shall return to BHE Designated Confidential Information and shall destroy all documents, notes and other materials containing or reflecting, directly or indirectly, Designated Confidential Information; provided, however, that the sealed record shall be retained by the Commission and shall continue to remain subject to the confidentiality requirements of this Order, until otherwise ordered by the Commission.

Dated: March 5, 2004

By Order of the Commission

James A. Buckley
Hearing Examiner

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