

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET UT-061625
	)	
QWEST CORPORATION	)	ORDER 04
	)	
To be Regulated Under an Alternative	)	NOTICE OF SUBSTITUTION OF
Form of Regulation Pursuant to RCW	)	PRESIDING OFFICER
80.36.135.	)	
	)	ORDER GRANTING MOTION IN
	)	PART FOR AMENDED
	)	PROTECTIVE ORDER FOR
	)	HIGHLY CONFIDENTIAL
	)	INFORMATION AND
	)	RESCINDING ORDER 01
.....	)	PROTECTIVE ORDER

- 1 **NATURE OF PROCEEDING.** This docket involves a petition by Qwest Corporation (Qwest) to be regulated under an alternative form of regulation (“AFOR”) pursuant to RCW 80.36.135.
  
- 2 **NOTICE OF SUBSTITUTION OF PRESIDING OFFICER.** The Washington Utilities and Transportation Commission (Commission) assigned Administrative Law Judge C. Robert Wallis of the Commission’s Administrative Law Division to preside with Commissioners during this proceeding. The retirement of Judge Wallis on March 1, 2007, requires reassigning this matter. The Commission has reassigned this matter to Administrative Law Judge Patricia Clark pursuant to RCW 34.05.425(2) and (7).
  
- 3 **MOTION FOR AMENDED PROTECTIVE ORDER FOR HIGHLY CONFIDENTIAL INFORMATION.** The parties requested that a Protective Order be entered in this docket. The request was granted and Order 01, Protective Order, was entered on November 16, 2006. On January 9, 2007, Qwest filed a motion for amended protective order for highly confidential information. Qwest requested that the current protective order be amended to create a “Highly Confidential” designation for certain information that would allow access only by the Commission Staff and Public Counsel. Qwest asserted that this issue arose in conjunction with responding to a Public Counsel Data Request. Pending a Commission ruling on the motion,

Qwest did not provide the discovery material to the other parties to this proceeding. Qwest contended that the documents in question contain highly-sensitive competitive information including Qwest's analysis of competition and competitors with respect to past or present facts and future plans, actions, and strategies Qwest might employ. Qwest argued that this information would be considered a trade secret in any industry and would not be available for review, especially by competitors. Qwest asserted that it would be immeasurably harmed if this information was disseminated more broadly than absolutely necessary.

- 4 By Notice served January 5, 2007, Judge Wallis permitted parties to file a response to Qwest's motion within four business days of service of the Notice, or January 11, 2007. On January 9, 2007, Public Counsel filed an unopposed request for an extension of time until January 17, 2007, to respond to the motion. By Notice served January 11, 2007, Judge Wallis granted the request and established January 17, 2007, as the deadline for all parties to respond to the motion.
- 5 Public Counsel filed a response and stated that it had no basis to object on the grounds that its access was restricted. However, as a matter of principle, Public Counsel opposed protective orders which improperly limit any party's access or information or unreasonably impair the openness and public nature of Commission proceedings. Public Counsel stated that it was not aware of any prior Commission protective order that completely denied access to highly confidential information to a party, including its counsel. No other party filed a response to Qwest's motion.
- 6 **PROTECTIVE ORDER.** The request to amend the Protective Order entered in this proceeding is granted. According to RCW 80.04.095, the Commission has authority to enter Protective Orders governing the disclosure of proprietary or confidential information in contested proceedings. Under WAC 480-07-420(2), the Commission may, upon motion by a party, amend its standard form of protective order to meet the parties' and the Commission's needs in individual cases. According to WAC 480-07-423(2), a party who wishes to designate information as highly confidential must file a motion for an amendment to the standard protective order, supported by a sworn statement that sets forth the specific basis for the requested level of protection and explanation of why the standard protective order is inadequate. The designation of "highly confidential" is limited to information, the dissemination of which, among other things, imposes a highly significant risk of competitive harm to the disclosing party without enhanced protections.<sup>1</sup> The motion filed by Qwest meets this standard.

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<sup>1</sup> WAC 480-07-423(3)(b).

- 7 Qwest argued that the intervenors' interests do not touch on issues to which the highly confidential information that prompted filing its motion may be relevant. No party contested this representation. Nevertheless, the Commission believes that the administrative process should facilitate access to information, even sensitive competitive information, with appropriate restrictions and protections. Therefore, in order to provide a reasonable opportunity for intervenors to access the information, if needed, we decline to enter an order that denies intervenors any access under any circumstances. We find that the form of protective order with highly confidential provisions we have entered in other proceedings<sup>2</sup> balances the need of the producer of highly confidential information to limit dissemination and use of that information with the need of other parties to have limited, but adequate, access to the information to protect their interests.
- 8 To balance these competing interests, access must be strictly limited to individuals who would not benefit or be influenced by the disclosure of highly confidential information. Those individuals are typically defined as outside counsel and outside experts who are not permitted to share the highly confidential information with either in-house counsel or experts from within corporations or organizations that may gain pecuniary benefit from use of the information. Furthermore, those individuals must complete and sign the nondisclosure agreement (Appendix C) attached to Order 04 and agree to comply with all terms and conditions in that order.
- 9 An amended protective order including a provision for Highly Confidential information has been entered in this docket. While that order allows access by parties other than the Commission Staff and Public Counsel, it strictly limits access and use by other parties. Moreover, the nondisclosure agreement required for access to highly confidential information gives Qwest advance notice of the specific individuals who seek access and their roles in relation to each party. The nondisclosure also sets forth the right to lodge objection and establishes the procedural form to present that objection as well as a deadline for the submission of objections.
- 10 Many terms and conditions in Order 01, Protective Order, are duplicative of this order with respect to confidential information. Therefore, to avoid duplication and confusion, Order 01 is rescinded and replaced with the amended protective order that addresses both confidential and highly confidential information.

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<sup>2</sup> See, i.e., Order 03 entered in Docket UE-060266/UG-060267.

- 11* In the event that difficulties arise from the highly confidential provisions in Order 04 that cannot be resolved amicably, parties are free to challenge at that time the application of provisions they perceive to cause harm or to seek amendment of the order.

Dated at Olympia, Washington, and effective January 19, 2007.

**WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION**

**PATRICIA CLARK**  
Administrative Law Judge