

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

Docket No. UE-072300

Docket No. UG-072301

(consolidated)

PUGET SOUND ENERGY, INC.'S
RESPONSE TO PUBLIC COUNSEL'S
MOTION CHALLENGING
CONFIDENTIALITY OF PSE'S
RESPONSE TO PUBLIC COUNSEL
DATA REQUEST NO. 131

1 Puget Sound Energy, Inc. (the "Company" or "PSE") respectfully submits to the Washington Utilities and Transportation Commission ("WUTC" or "the Commission") this response opposing Public Counsel's Motion Challenging Confidentiality of PSE's Response to Public Counsel Data Request No. 131, filed July 18, 2008 ("the Motion"). In the Motion Public Counsel seeks an order declaring that certain cost benefit information contained in a third party cost benefit analysis (the "KEMA Report") is not entitled to confidential treatment. As discussed in more detail below, the KEMA Report contains valuable commercial information that if published would place PSE at a disadvantage in negotiating future professional services agreements. Accordingly, PSE requests that the Motion be denied.

A. The Confidential Data and Information Contained in the KEMA Report is Properly Designated Because it is Valuable Commercial Information

2 In issuing a protective order in this case the Commission anticipated a significant risk that confidential information might become available to persons who have no legitimate

need for such information and that injury to the information provider could result.¹ The Protective Order therefore restricts the dissemination of valuable commercial information through its designation of such as "Confidential Information."² The Protective Order requires confidential information to be limited to information that truly might compromise the ability to compete fairly or that otherwise might impose a business risk if disseminated.³ WAC 480-07-165(2) and RCW 80.04.095 define confidential information to include valuable commercial information, including trade secrets or confidential marketing, cost, or financial information..." As Public Counsel states, "cost or financial information" includes (1) specific numerical data, comprising commercially valuable business information, disclosure of which will create a true business risk,⁴ or (2) calculations based on such data, or analyses performed by or on behalf of the company that might have current or future benefit to competitors or give an advantage to competitors, that might affect an as-yet-incomplete transaction, or that might affect future transactions.⁵

¹ *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-072300/UG-072301, Order 02 (Protective Order with "Highly Confidential" Provisions) (hereinafter, Protective Order).

² *See id.* at ¶3.

³ *See id.* at ¶4.

⁴ The Motion at page 4, citing *U.S. West, and Qwest Communications Int'l, For an Order Disclaiming Jurisdiction or, in the Alternative, Approving the U.S. West-Qwest Communications Int'l Merger*, Docket No. UT-991358, Eighth Supplemental Order, ¶¶78-79 and *In the Matter of the Application of Qwest Corporation Regarding the Sale and Transfer of Qwest Dex to Dex Holdings, LLC, a non-affiliate*, Docket No. UT-021120, Sixth Supplemental Order.

⁵ *See id.*, citing *In the Matter of the Application of Qwest Corporation Regarding the Sale and Transfer of Qwest Dex to Dex Holdings, LLC, a non-affiliate*, Docket No. UT-021120, Sixth Supplemental Order ¶¶12, 17 and *US West Communications, Inc. v. Office of Consumer Advocate*, 498 N.W. 2d 711 (1993).

3 The confidential information that Public Counsel challenges includes specific financial information regarding estimated costs and benefits of an outage management system and a geospatial information system ("OMS/GIS"). The KEMA Report, entitled Cost Benefit Analysis of OMS/GIS Initiative, describes the results of an analysis conducted by KEMA on behalf of PSE to determine the estimated costs and benefits of implementing OMS and GIS programs as part of PSE's consideration of the acquisition of such programs. KEMA applied PSE-specific financial information such as labor costs, efficiencies in operations and maintenance, PSE's mapping systems, information technology, and other capital expenditures to arrive at a quantitative and qualitative cost benefit analysis.⁶ KEMA's cost analysis includes specific dollar amounts for hardware, software, and labor, including PSE internal resources and external professional services.⁷ Such costs are not generally described in theoretical lump-sum terms, but are broken down into monetary estimates for individual expenditures in each year over a specific time period. If the confidential information in the KEMA Report were to become public, it is likely that bids received in response to a request for proposals would gravitate to the level of costs outlined in the document, and PSE would be disadvantaged in its negotiation with the various software vendors, systems integration and other professional service firms. The Company, and ultimately the PSE customers, could end up paying more than is necessary for OMS/GIS.

⁶ The KEMA Report, section 3-3.

⁷ *Id.*

4 Even in such instances where the confidential information is described in more general terms, such as the net benefits on page 9-5 of the KEMA Report and Figure 9-6, Project Business Case Summary, a potential service provider could "back into" or otherwise infer the underlying cost information.

5 As Public Counsel states, confidential information includes financial information based on "analyses performed by or on behalf of the company that might have current or future benefit to competitors or give an advantage to competitors, that might affect an as-yet-incomplete transaction, or that might affect future transactions." This is exactly the information that PSE has designated as confidential and that Public Counsel challenges. It is also the type of information that the Commission has protected in the past. In a challenge to Qwest's confidential designation of testimony related to financially sensitive information, this Commission determined that testimony that did not include direct or indirect expressions of specific financial data was nonetheless appropriately designated because it included characterizations of confidential financial and business studies commissioned by the company in connection with a pending transaction.⁸ The Commission states, "We strike a balance that promotes open, public proceedings, but respects the legitimate interests of private enterprise in protecting commercially sensitive information from public view."⁹

⁸ *In the Matter of the Application of Qwest Corporation Regarding the Sale and Transfer of Qwest Dex to Dex Holdings, LLC, a non-affiliate*, Docket No. UT-021120, Sixth Supplemental Order, (May 13, 2003), at 3.

⁹ *Id.*

6 It is important to note that, as Public Counsel references on page 2 of its Motion, it originally requested that PSE lift the confidential designation of several other pieces of information in the KEMA Report, but Public Counsel ultimately agreed with PSE that such information was appropriately designated. Like the information previously discussed with Public Counsel, the information Public Counsel now challenges is financial information based on an analyses performed on behalf of the Company that might affect future transactions, and is therefore properly designated.

B. Public Counsel Misrepresents the Information it Challenges.

7 Public Counsel states that it has limited its challenge to general cost assumptions and information for which the public has a legitimate need, *i.e.*, the information related to the overall potential benefits of OMS/GIS programs.¹⁰ Public Counsel lists the specific information it challenges in a table with the heading "Description/Title".¹¹ However, Public Counsel misstates the information that it is challenging and therefore misrepresents the information as general potential benefits of OMS and GIS programs.

8 For example, Public Counsel describes the first item in its table as "Net Present Value (NPV) of OMS". However, PSE did not designate as confidential the NPV of OMS operational benefits, and it clearly provided this information on page 1-6 of the KEMA Report. The information that PSE actually designated as confidential was the NPV of the "total costs inclusive of annual O&M costs".

¹⁰ See the Motion at 2.

¹¹ See the Motion at 3.

9 The second of Public Counsel's errors occurs in the very next item on Public Counsel's list. Public Counsel states that it challenges the designation of "Figure 1-1: OMS Cost and Benefit Trends". However, Figure 1-1 does not illustrate OMS cost and benefit trends, rather it is a numerical list and a graphical representation of specific OMS capital cost estimates broken down per year and per specific type of expenditure.

10 Finally, Public Counsel states that rather than "cost information", the confidential information reveals only the net benefit to PSE and its customers in investing in these systems.¹² Such characterization of the confidential information is simply untrue, regardless of how Public Counsel renames the titles and descriptions found in the KEMA Report. Rather than general cost assumptions and information for which the public has a legitimate need, the data and information challenged by Public Counsel are actually financial estimates that, if publicly disseminated, could harm PSE's ability to compete fairly.

C. PSE has Scrutinized the KEMA Report and has Limited the Information it has Designated Confidential Information.

11 Pursuant to the Protective Order, PSE closely scrutinized potentially confidential material and strictly limited what it designates confidential information to only that information that truly might compromise PSE's ability to compete fairly or that otherwise might impose a business risk if disseminated without the protections provided in the

¹² See the Motion at 5.

Protective Order. PSE carefully scrutinized the 112-page KEMA Report and designated only numerical and financial information on a handful of pages.

12 For instance, in contrast to the specific capital cost information in Figure 1-1 of the KEMA Report, PSE did not designate as confidential more general cost information in Figure 1-5, GIS Cost and Benefit Trends. Figure 1-5 reveals both the time period of the trends and the range of GIS costs, and the only confidential information is more specific cost information pinpointing estimated dollar amounts categorized by specific type of cost and benefit. Public Counsel nonetheless challenges this more specific information arguing on page 7 of the Motion that such information must be disclosed to the public in order to determine whether PSE's total storm costs were prudent. However, Public Counsel has not stated how the specific cost estimates of a potential GIS program are essential to determining whether overall storm costs were prudent.

13 The Commission has recognized the need to protect commercially sensitive information from public view. PSE has carefully scrutinized the information it has designated to ensure it properly protects only that information that might pose a business risk if disclosed to the public. For these and the other reasons set forth above, PSE requests that the Commission deny Public Counsel's Motion.

Respectfully submitted this 25th day of July 2008.

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