

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

**Docket UE-19 ___
Docket UG-19 ___**

**PUGET SOUND ENERGY’S MOTION
FOR AMENDED PROTECTIVE
ORDER WITH “HIGHLY
CONFIDENTIAL” PROVISIONS**

- I.* Puget Sound Energy (“PSE”) files this Motion for Amended Protective Order With “Highly Confidential” Provisions pursuant to WAC 480-07-420, and respectfully moves the Commission for a Protective Order in conjunction with its general rate case filing dated June 20, 2019 (“2019 GRC”). PSE’s representatives for purposes of this proceeding are:

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I. RELIEF REQUESTED

2. PSE respectfully requests that the Commission issue an amended standard Protective Order that includes “highly confidential” provisions. Submitted as Exhibit A to this Motion is a proposed form of amended Protective Order with “highly confidential” provisions.

II. STATEMENT OF FACTS

3. This Motion is being filed coincident with PSE’s 2019 GRC, filed on June 20, 2019. Confidential information, including portfolio management strategies, projections of future capital spending, commercial information, modeling, and sensitive competitive information, may be required to resolve the issues in this proceeding. In its 2019 GRC filing, PSE designated a limited number of materials as “confidential” under WAC 480-07-160. Such materials include information about PSE’s portfolio management strategies, projections of future capital spending, and other commercial information, that have not been publicly disclosed. Public release of such materials is not appropriate. Absent a protective order, a significant risk exists 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.
4. The Commission’s standard form of protective order should be sufficient to protect the materials that have been and may subsequently be identified as “confidential.” However, some information that has been and will be disclosed in this matter require enhanced protections from disclosure, including highly sensitive proprietary financial and sensitive commercial information. Accordingly, in its 2019 GRC filing, PSE has designated portions of a few select pages of

materials as “highly confidential.” PSE has been careful in its 2019 GRC filing to minimize the amount of information designated “highly confidential.” In its filing, PSE designated only two exhibits which support the Prefiled Direct Testimony of William T. Einstein, Exh. WTE-1T, as having material that is “highly confidential.” *See* Exh WTE-6HC & Exh. WTE-7HC. These materials include information relating to proposals by power providers to provide renewable resources, which contain sensitive commercial and competitive information relating to the pricing of such renewable resources.

5. In addition to the materials designated as “confidential” or “highly confidential” in its 2019 GRC filing, PSE anticipates that information requested in discovery could require a “confidential” or “highly confidential” designation.

III. STATEMENT OF ISSUES

6. This Motion for Amended Protective Order with “Highly Confidential” Provisions presents the following issue: Should the Commission enter an amended Protective Order that protects highly sensitive information submitted by PSE, as the Commission has done in prior general rate cases and other similar proceedings?

IV. EVIDENCE RELIED UPON

7. In support of the relief requested in this Motion, PSE relies on its 2019 GRC filing which contains portfolio management strategies, projections of future capital spending, commercial information, modeling, and additional sensitive competitive information, which require

“confidential” and “highly confidential” protections, and that such protections may be further required to protect information requested in discovery.

V. AUTHORITY AND ARGUMENT

8. An amended protective order to govern the disclosure of confidential and highly confidential information is required in this proceeding. Authority for PSE’s requested relief is found in WAC 480-07-420(2), which provides for entry of a protective order with “highly confidential” provisions. In accordance with WAC 480-07-420(2), it is necessary to create a separate designation and a higher degree of protection for certain documents that contain highly confidential information. This is consistent with the Commission’s practice in prior cases involving contentions that certain materials require heightened protection to facilitate the exchange of information, as provided in WAC 480-07-420. There is also ample Commission precedent for the entry of a protective order with a “highly confidential” designation in PSE’s prior general rate cases to protect information similar to the sensitive information needing protection in this case. *See, e.g., WUTC v. PSE*, Dockets UE-170033/UG-170034 (consolidated), Order 02 (Jan. 26, 2017); *WUTC v. PSE*, Dockets UE-111048/UG-111049 (consolidated), Order 01 (June 17, 2011).

9. Generally, the Commission has amended its standard protective order to allow for the designation of highly confidential documents under the following circumstances: (1) the parties to the docket are competitors or potential competitors, or the attorneys or consultants in the case may represent such competitors or potential competitors; (2) the information relevant to the case may contain sensitive competitive information that would be of value to competitors if released;

(3) a disclosing party may suffer harm if forced to disclose certain information without heightened protection; and (4) the entry of the protective order will facilitate discovery.

10. The materials PSE seeks to protect are precisely the type of information that is intended to be eligible for “highly confidential” protections in WAC 480-07-420(2). In its 2019 GRC filing, PSE has designated two exhibits supporting the Prefiled Direct Testimony of William T. Einstein, Exh. WTE-1T, as “highly confidential” because the exhibits contain information relating to proposals by power providers to provide renewable resources. These proposals contain sensitive commercial and competitive information shared in confidence to PSE that the submitting parties intended to remain confidential as part of a request for information (“RFI”) or request for proposal (“RFP”) process.

11. PSE and its customers have an interest in protecting against the disclosure of such information to the public; to other power providers; to developers, engineers, and procurement or construction contractors; or to persons or entities that represent or advise such parties, who are competing or potentially competing against each other in the industry. Such protections are necessary for at least two reasons: (1) because such parties should not be put in the position of being able to “game” the RFI or RFP process by having access to confidential information about their competitors or potential competitors merely by intervening in the 2019 GRC proceeding; and (2) because if PSE is to attract a broad slate of proposals in response to future RFIs or RFPs, entities considering submitting proposals must have confidence that the confidentiality of their sensitive commercial information will be respected, notwithstanding the fact that PSE’s resource acquisitions are subject to some degree of public scrutiny through the regulatory process.

12. In addition, the release of any of the “highly confidential” information designated in PSE’s 2019 GRC to power providers, developers, engineering, procurement and construction contractors, or to persons or entities that represent or advise them, would result in increased costs for PSE and, ultimately, its customers. This is because there would be a tendency on the part of these parties to use such information to benchmark their transactions with PSE against these other transactions in a sort of “most favored nation” view of negotiations over their particular projects and services. Instead of being provided with the information that would give them such leverage, counterparties should be required to focus on the cost structures of their own services when negotiating with PSE.

13. The limited materials PSE has marked as “highly confidential” should not be viewed at all by power providers, developers, engineering, procurement and construction contractors, or any other party: (i) that have offered or could potentially offer their services to PSE for its electric portfolio; or (ii) that are competing or could potentially compete with other projects that are or could be offered to PSE for its electric portfolio. Restrictions on access to “highly confidential” information should also extend to employees and owners of such contractors or developers, as well as to consultants or advisors to such contractors or developers (including their attorneys) to the extent such persons are consulting or advising on matters for which the “highly confidential” information would be relevant. There is a highly significant risk of competitive harm to PSE and/or the project owners, contractors and developers that submitted their commercially sensitive information to PSE if parties who are competitors or potential competitors of each other, or who are counterparties or potential counterparties to PSE with

respect to such transactions, are able to access the information PSE has designated “highly confidential” merely by intervening in this 2019 GRC proceeding.

14. PSE is not seeking to restrict access by Commission Staff or Public Counsel to “highly confidential” information beyond the protections contained in the Commission’s standard protective order for “confidential” information, provided that experts retained by Commission Staff or Public Counsel certify that they will not use the information to achieve a competitive advantage. PSE also asks that any intervenors in this proceeding, including their principals, attorneys and experts, be required to make the same showing prior to being permitted access to the “highly confidential” information.

VI. CONCLUSION

15. WHEREFORE, PSE respectfully requests that the Commission enter a Protective Order with “highly confidential” provisions in this case, in substantially the form attached as Exhibit A.

RESPECTFULLY SUBMITTED this 20th day of June, 2019.

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