

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

WASHINGTON UTILITIES AND)	DOCKETS UE-072300 &
TRANSPORTATION COMMISSION,)	UG-072301(<i>consolidated</i>)
)	
Complainant,)	ORDER 11
)	
v.)	
)	ORDER DENYING PUBLIC
PUGET SOUND ENERGY, INC.,)	COUNSEL’S AMENDED MOTION
)	CHALLENGING CONFIDENTIALITY
Respondent.)	OF PSE’S RESPONSE TO PUBLIC
)	COUNSEL DATA REQUEST NO. 131
.....)	

MEMORANDUM

- 1 On December 3, 2007, Puget Sound Energy, Inc. (PSE), filed a general rate case with the Washington Utilities and Transportation Commission (Commission) seeking revisions to its currently effective Tariff WN U-60, Tariff G, Electric Service and Tariff WN U-2, Gas Service, Advice No. 2007-35. The Commission suspended the filing and set the matter for hearing.

- 2 On July 22, 2008, Public Counsel filed its Amended Motion Challenging Confidentiality of PSE’s Response to Public Counsel Data Request No. 131 (Amended Motion).¹ The response consists of a report, prepared by KEMA, Inc., presenting PSE with a cost-benefit analysis for the procurement, implementation, production use and maintenance of various storm-preparedness systems, specifically an Outage Management System and a Geospatial Information System (OMS/GIS). Relying on the Protective Order previously entered in this case,² PSE designated limited portions of the report as confidential. In its Amended Motion, Public Counsel challenges only a subset of PSE’s designations.³

- 3 PSE responded on July 28, 2008, opposing Public Counsel’s Amended Motion.

¹ Public Counsel originally filed its motion on July 18, 2008. The amended version included a copy of Public Counsel Data Request No. 131 as Attachment A.

² Order 02, Protective Order, ¶ 1.

³ Public Counsel’s Amended Motion, at 3.

I. Argument

4 Public Counsel asserts that the challenged sections of the KEMA Report discussing the overall benefit of potential OMS/GIS projects do not contain commercially sensitive cost information that can be properly designated confidential. Public Counsel argues:

KEMA prepared this report and calculated these numbers not for the purpose of providing estimates of specific costs associated with OMS/GIS implementation. Rather, what appears as “cost information” in the report is a series of assumptions comprising one step in a theoretical cost benefit analysis that, ultimately, reveals only the net benefit to PSE and its customers in investing in these systems.

In essence, Public Counsel asserts that the challenged information is too general in nature to merit confidential treatment.

5 In addition, Public Counsel suggests that the report’s conclusions on the net benefits of OMS/GIS presented as single dollar amounts illustrating the benefit to be derived over the next fifteen years do not reveal commercially sensitive or proprietary information. According to Public Counsel, it does not challenge the confidentiality of any specific cost information, but only KEMA’s general estimates and assumptions of hypothetical overall costs.

6 Finally, Public Counsel argues that the public has a legitimate need for access to the analysis of the potential cost benefits of OMS/GIS contained in the KEMA report because the prudence of PSE’s storm recovery costs cannot be determined without this information. According to Public Counsel, disclosure of the costs and benefits of various storm preparation options available to the Company are critical to the public’s evaluation of whether or not PSE is adequately preparing for future storm events.

7 PSE opposes Public Counsel’s Amended Motion because “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.” In

PSE's view, KEMA's incorporation of this type of information makes it likely that bidders in a future request for proposals would mold their submissions to the level of costs outlined in the report, disadvantaging PSE and, in the end, its customers.

- 8 PSE further argues that the general information designated as confidential in the KEMA report was the product of analyses performed on behalf of PSE that might be of value to PSE's competitors or affect future transactions. Finally, PSE points out that Public Counsel's own descriptions of challenged information do not accurately correspond to the information contained in the KEMA report.

II. Discussion and Disposition

- 9 We deny Public Counsel's motion. The Commission's governing statutes and rules permit a party to designate valuable commercial information filed with the Commission as "confidential," particularly cost or financial information.⁴ PSE has adequately demonstrated the legitimacy of its interests in keeping the challenged portions of the KEMA report confidential as permitted by Order 02, Protective Order.
- 10 As both PSE and Public Counsel acknowledge, our prior definitions of "cost or financial information" have included not only "specific numerical data," the disclosure of which will create potentially obvious business risk, but also:

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

Thus, considering that the analyses and conclusions contained in the KEMA report are presented in a way that might permit a competitor or a vendor competing for PSE's business to "back-out" or otherwise infer the underlying information provided by PSE under the Protective Order, this information should remain confidential.

⁴ RCW 80.04.095; *see also* WAC 480-07-165(2).

⁵ *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 UT-021120, Sixth Supplemental Order (May 13, 2003), ¶¶ 12 and 17.

11 We have completed our *in camera* review of the material contained in the KEMA report put in issue by Public Counsel's Amended Motion and have carefully considered the parties' arguments. We find that PSE properly designated the challenged material as confidential under the Protective Order. The challenged data and graphs illustrate the results of KEMA's calculations that rely on commercially sensitive data. This cost information was provided under the Protective Order and it will continue to be commercially sensitive at least until such time as PSE requests and obtains bids for a new or upgraded OMS/GIS. Disclosure of the challenged information prior to that time could place PSE at a competitive disadvantage in terms of obtaining the most favorable bids. This would harm PSE and its customers and therefore would not be in the public interest. Public Counsel has had full access to this information during the pendency of this proceeding and has been able to use it in its advocacy on behalf of residential and business customers of PSE. Thus, there is no harm to the public interest if this information continues to be treated as confidential. We conclude for these reasons that Public Counsel's Amended Motion should be denied.

ORDER

THE COMMISSION ORDERS:

- 12 (1) Public Counsel's Challenge to the Confidentiality of PSE's Response to Public
Counsel Data Request No. 131 is denied.
- 13 (2) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective September 19, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge