

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of Northwest Fiber Holdco, LLC, and BCE Holding Corporation for an Order Approving the Transfer of Control of Ziplly Fiber Northwest, LLC to BCE Holding Corporation.

Applicant.

DOCKET UT-240951

ORDER 01

PROTECTIVE ORDER WITH
"HIGHLY CONFIDENTIAL"
PROVISIONS

BACKGROUND

- 1 On December 12, 2024, Northwest Fiber Holdco, LLC and BCE Holding Corporation filed a Joint Application for an Order Approving the Transfer of Control of Ziplly Fiber Northwest, LLC to BCE Holding Corporation.
- 2 On January 22, 2025, Northwest Fiber Holdco, LLC (NWF Holdco), and BCE Holding Corporation (BCE Holding) (collectively, the Joint Applicants). The Joint Applicants filed a motion requesting that the Washington Utilities and Transportation Commission (Commission) to issue an amended version of its standard protective order in this matter. The Company stated in its motion that it is disclosing certain information that is highly confidential and includes proprietary and/or sensitive competitive information requiring “heightened protection” pursuant to WAC 480-07-160(2)(d), and is protected under WAC 480-07-160, generally.
- 3 The Washington Utilities and Transportation Commission finds that the parties reasonably anticipate that discovery or evidentiary filings will require information designated as confidential, pursuant to WAC 480-07-160, to be disclosed to parties, who would not be authorized to access that information in the absence of a protective order. The Commission further finds that a protective order governing disclosure of information designated as confidential is necessary to protect the provider of that information while promoting the free exchange of information and development of the evidentiary record.
- 4 Accordingly, the Commission enters this protective order (Order) pursuant to RCW 34.05.446 and WAC 480-07-420 to govern the discovery and use of information designated as confidential in this proceeding.

ORDER

A. General Provisions

- 5 **Confidential Information.** All access, review, use, and disclosure of any material designated by a party to this proceeding as confidential pursuant to WAC 480-07-160 (referred to in this Order as “Confidential Information”) is governed by this Order and by WAC 480-07-160. Only information that meets the definition of “confidential information” in WAC 480-07-160(2)(b) may be designated as Confidential Information.
- 6 **Designating Confidential Information.** Parties must designate Confidential Information as required in WAC 480-07-160. The Commission may reject any filing that fails to properly designate or mark Confidential Information or that designates clearly public information as confidential.
- 7 **Limitation on Use.** A party or a party’s counsel or expert may review, use, or disclose information designated as Confidential Information by another party only for purposes of this proceeding.

B. Disclosure of Confidential Information

- 8 **Persons Permitted Access.** No person bound by this Order may disclose information designated as Confidential Information by another party to anyone other than the Commissioners, Commission Staff, the presiding officer(s), and, subject to the requirements in paragraph 7 below, counsel for each of the parties to this proceeding, each such counsel’s administrative staff, and persons designated by the parties as their experts in this proceeding. No expert who requests access to Confidential Information other than members of Commission Staff or Public Counsel may be an officer, director, direct employee, major shareholder, or principal of any party or any competitor of any party unless the provider of the Confidential Information waives this restriction. Any dispute concerning persons entitled to access Confidential Information must be brought before the presiding officer for resolution.
- 9 **Non-disclosure Agreement.** Before being allowed access to any Confidential Information disclosed in this docket, each counsel or expert must agree to comply with and be bound by this Order by executing, filing, and serving Exhibit A (counsel) or Exhibit B (expert) attached to this Order (collectively, Non-disclosure Agreement). A counsel’s administrative staff need not execute a Non-disclosure Agreement if counsel agrees to be responsible for any violation of this Order that results from his or her staff’s conduct. If the provider of the Confidential Information objects to allowing any expert to have access to such information, that party must complete the applicable portion of the Non-disclosure Agreement for that expert, timely file it with the Commission, and serve all parties. A party waives objection to allowing access to Confidential Information to an

expert who has executed a Non-disclosure Agreement if the party fails to comply with this requirement.

- 10 **Access to Confidential Information.** Parties must comply with the requirements in WAC 480-07-160 and WAC 480-07-420 when providing documents containing Confidential Information to the Commission or persons who have executed a Non-disclosure Agreement. Persons who have executed a Non-disclosure Agreement agree that they will exercise all reasonable diligence to protect Confidential Information from disclosure to unauthorized persons.

C. Highly Confidential Information

- 11 **Designation and Disclosure of Highly Confidential Information.** Intervenors in this proceeding may include competitors, or potential competitors. Moreover, information relevant to the resolution of this case is expected to include sensitive competitive information. Parties to this proceeding may receive discovery requests that call for the disclosure of highly confidential documents or information, the disclosure of which imposes a highly significant risk of competitive harm to the disclosing party or third parties. Parties may designate documents or information they consider to be Highly Confidential and such documents or information will be disclosed only in accordance with the provisions of this Section.
- 12 Parties must carefully scrutinize responsive documents and information and strictly limit the amount of information they designate as Highly Confidential Information to only information that truly might impose a serious business risk if disseminated without the heightened protections provided in this Section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads: **“Highly Confidential Per Protective Order’ in WUTC Docket UT-240951”**, except that materials in pre-filed direct testimonies and exhibits submitted on behalf of NWF Holdco and BCE Holding and designated as **“Highly Confidential Per WAC 480-07-160”** shall also be subject to the protections and restrictions set forth in this Order for “Highly Confidential Information.”
- 13 Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contains Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate where Highly Confidential Information is redacted. The unredacted versions of each page containing Highly Confidential Information and provided under seal also must be stamped “Highly Confidential” and submitted on light blue paper with references

(*i.e.*, highlighting or other markings) to show where Highly Confidential Information is redacted in the original document.

- 14 Parties who seek access to or disclosure of Highly Confidential documents or information must designate one or more outside counsel and one or more outside consultant, legal or otherwise, to receive and review materials marked “Highly Confidential . . .” For each person for whom access to Highly Confidential Information is sought, parties must submit to the party that designated the material as Highly Confidential and file with the Commission a Highly Confidential Information Agreement, in the form prescribed by Exhibit C of this Order, certifying that the person requesting access to Highly Confidential Information:
- a. Is not now involved, and will not for a period of two years involve themselves in, competitive decision making with respect to which the documents or information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the company or business organization from whom they seek disclosure of highly confidential information with respect to the development or purchase of energy resources; and
 - b. Has read and understands, and agrees to be bound by, the terms of the Protective Order in this proceeding, including this Section of the Protective Order.
- 15 The restrictions in paragraph 14 do not apply to persons employed with the Attorney General's office for Public Counsel and Commission Staff. However, Public Counsel and Commission Staff shall submit the Highly Confidential Information Agreement, in the form prescribed by Exhibit C of this Order, for any external experts or consultants they wish to have review the Highly Confidential Information.
- 16 Any party may object in writing to the designation of any individual counsel or consultant as a person who may review Highly Confidential documents or information. Any such objection must demonstrate good cause, supported by affidavit, to exclude the challenged counsel or consultant from the review of Highly Confidential documents or information. Written response to any objection must be filed within five days after receipt of the objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of the Highly Confidential Information to the challenged individual, the Commission shall determine whether the Highly Confidential Information must be disclosed to the challenged individual.

- 17 Outside counsel designated in the manner described in Section 14, above, may provide one copy of Highly Confidential documents or information to their outside consultants or experts who have been designated to receive Highly Confidential Information in the manner described in paragraph 14, above. Designated outside counsel and consultants will each maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel and consultants have access. No additional copies will be made, except for use as part of prefiled testimonies or exhibits or during the hearing, and then such copies shall also be subject to the provisions of this Order.
- 18 Staff of designated outside counsel and staff of designated outside consultants who are authorized to review Highly Confidential Information may have access to Highly Confidential documents or information for purposes of processing the case, including but not limited to receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits, and briefs. Outside counsel and consultants are responsible for appropriate supervision of their staff to ensure the protection of all confidential information consistent with the terms of this Order.
- 19 Any testimony or exhibits prepared that include or reflect Highly Confidential Information must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing, or refer to such materials in cross-examination of a witness. The presiding officer will determine the process for including such documents or information following consultation with the parties.
- 20 The designation of any document or information as Highly Confidential may be challenged by motion and the classification of the document or information as Highly Confidential will be considered in chambers by the presiding officer(s). The party contending that a document or information is Highly Confidential bears the burden of proving that such designation is necessary.
- 21 Highly Confidential documents and information will be provided to Commission Staff and Public Counsel under the same terms and conditions of this Protective Order as those that govern the treatment of Confidential Information provided to Commission Staff and Public Counsel and as otherwise provided by the terms of this Protective Order other than this Section.

D. Use of Confidential Information

- 22 **Reference to Confidential Information.** Any public reference to Confidential Information during any part of this proceeding including, but not limited to, in motions, briefs, arguments, direct testimony, cross-examination, rebuttal, and proposed offers of proof, must not disclose the content or substance of that information, directly or indirectly. To the extent not addressed in this Order or WAC 480-07-160, the parties must negotiate how best to prevent unauthorized disclosure of Confidential Information with the goal of protecting each party's rights with respect to Confidential Information while allowing all parties the latitude to present the evidence necessary to support their respective cases and to maximize the information available to the public. If the parties cannot reach agreement about how to use or refer to Confidential Information without disclosing it in violation of this Order, they must notify the presiding officer, who will determine the arrangements to protect the Confidential Information to ensure that all parties are afforded their full due process rights, including the right to cross-examine witnesses.
- 23 Counsel or other representative of any party that intends to disclose Confidential Information during oral testimony, cross-examination, or argument must give such prior notice as is feasible to the provider of that information and the presiding officer. That notice, at a minimum, must permit the presiding officer an opportunity to clear the hearing room of persons not bound by this Order or to take other action as is appropriate in the circumstances.
- 24 **Right to Challenge Admissibility.** Nothing in this Order may be construed to restrict any party's right to challenge the admissibility or use of any Confidential Information on any ground other than confidentiality, including but not limited to competence, relevance, or privilege.
- 25 **Right to Challenge Confidential Designation.** Any party by motion or the Commission on its own initiative may challenge a party's designation of information as confidential under WAC 480-07-160 and this Order. The presiding officer will conduct an *in camera* hearing to determine the propriety of the designation. The burden of proof to show that such information is properly designated as confidential is on the party that made that designation. Pending Commission determination, the challenged Confidential Information shall be treated in all respects as protected under the terms of this Order. The presiding officer will make his or her determination orally on the record or in a written order.
- 26 If the presiding officer determines the challenged information is not entitled to protection under this Order and WAC 480-07-160, the information will continue to be protected under this Order for ten days from the date of the presiding officer's determination. If a

party seeks administrative review of a determination by a presiding officer other than the Commissioners within that time, the Commission will stay the determination pending an order from the Commission. If the Commission upholds the determination on review, in whole or in part, the information will continue to be protected under this Order for 10 days from the date of the Commission order. If no party seeks administrative or judicial review of the presiding officer's determination within 10 days, or if no reviewing court enters an order protecting the challenged information from disclosure within 10 days of a final Commission determination, the Commission will require the challenged information to be refiled without the confidential designation or otherwise treated as public information.

- 27 **Admission of Confidential Information Under Seal.** The portions of the record of this proceeding containing Confidential Information will be sealed for all purposes, including administrative and judicial review, unless such Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to a lawful order of the Commission or of a court having jurisdiction to do so.
- 28 **Return of Confidential Information.** Within thirty days following the conclusion of this proceeding, including any administrative or judicial review, every person who has executed a Non-disclosure Agreement and possesses or controls any Confidential Information disclosed by another party (including personal notes that make substantive reference to that Confidential Information), either must return all such Confidential Information to the party that provided it or must certify in writing that all copies and substantive references to that information in notes have been destroyed; PROVIDED, that counsel may retain exhibits that contain Confidential Information as counsel records subject to the terms and conditions of this Order.
- 29 **Freedom of Information Laws.** Until the Commission or any court having jurisdiction finds that any particular Confidential Information is not properly designated as confidential pursuant to WAC 480-07-160, the Commission expects any federal agency that has access to or receives copies of the Confidential Information to treat that information as within the exemption from disclosure provided in the Freedom of Information Act at 5 U.S.C. § 552 (b)(4); the Commission also expects any Washington state agency that has access to or receives copies of the Confidential Information to treat that information as being within the exemption from disclosure provided in RCW 42.56.210.
- 30 **Notice of Compelled Production in Other Jurisdictions.** If a person who has executed a Non-disclosure Agreement is compelled to produce documents containing Confidential Information in any regulatory or judicial proceeding by the body conducting the proceeding, the person must provide notice to the party that provided the Confidential Information. Such Confidential Information must not be produced for at least five

business days following such notice to permit the party that provided the information an opportunity to defend the protected status of the material before the regulatory or judicial body that would otherwise compel production. Disclosure after that date, in compliance with an order compelling production, is not a violation of this Order.

31 **Modification.** The Commission may modify this Order on motion of a party or on its own motion upon reasonable prior notice to the parties and an opportunity for hearing.

32 **Violation of this Order.** Violation of this Order by any party to this proceeding or by any other person bound by this Order by unauthorized use or unauthorized disclosure of Confidential Information may subject such party or person to liability for damages and shall subject such party to penalties as generally provided by law.

DATED at Lacey, Washington, and effective January 30, 2025.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ James E. Brown II
JAMES E. BROWN II
Administrative Law Judge

EXHIBIT A (ATTORNEY AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET UT-240078
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as attorney in this proceeding for _____ (party to this proceeding) agree to comply with and be bound by the Protective Order entered by the Washington Utilities and Transportation Commission in Docket UT-240078, and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions. I further agree to be responsible for any violations of the Protective Order that result from the conduct of administrative staff I allow to have access to Confidential Information.

Signature

Date

Address

EXHIBIT B (EXPERT AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET UT-240078
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as expert witness in this proceeding for _____ (a party to this proceeding) hereby agree to comply with and be bound by the Protective Order entered by the Washington Utilities and Transportation Commission in Docket UT-240078 and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

Signature

Date

Employer

Address

Position and Responsibilities

* * *

The following portion is to be completed by the responding party and filed with the Commission within 10 days of receipt; failure to do so will constitute a waiver and the above-named person will be deemed an expert having access to Confidential Information under the terms and conditions of the protective order.

_____ No objection.

_____ Objection. The responding party objects to the above-named expert having access to Confidential Information. The objecting party shall file a motion setting forth the basis for objection and asking exclusion of the expert from access to Confidential Information.

Signature

Date

EXHIBIT C (HIGHLY CONFIDENTIAL INFORMATION AGREEMENT)

AGREEMENT CONCERNING HIGHLY CONFIDENTIAL INFORMATION
IN DOCKET UE-161123
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as

- In-house attorney
- In-house expert
- Outside counsel
- Outside expert

in this proceeding for _____ (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Washington that the following are true and correct:

- a. I am not now involved, and will not for a period of two years involve myself in competitive decision making with respect to which the documents or information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the company or business organization from whom they seek disclosure of highly confidential information with respect to the development or purchase of energy resources; and
- b. I have read and understand, and agree to be bound by, the terms of the Protective Order in this proceeding, including this Section C of the Protective Order.

Signature

Date

City/State where this Agreement was signed

Employer

Position and Responsibilities

Permanent Address

* * *

The following portion is to be completed by the responding party and filed with the Commission within 10 days of receipt. Failure to do so will constitute a waiver and the above-named person will be deemed a person having access to Highly Confidential Information under the terms and conditions of the protective order.

_____ No objection.

_____ Objection. The responding party objects to the above-named person having access to Highly Confidential Information. The objecting party shall file a motion with the Commission, supported by affidavit, setting forth the basis for objection and asking for exclusion of the person from access to Highly Confidential Information.

Signature

Date