BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, INC., Respondent.	)	DOCKET NO. UE-050870 RESPONSE OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES IN OPPOSITION TO PUGET SOUND ENERGY'S MOTION FOR AMENDED PROTECTIVE ORDER WITH HIGHLY CONFIDENTIAL PROVISIONS

INTRODUCTION

1 Pursuant to WAC § 480-07-375(4), the Industrial Customers of Northwest Utilities ("ICNU") submits this Response ("Response") in opposition to Puget Sound Energy's ("PSE" or the "Company") Motion for Amended Protective Order with Highly Confidential Provisions ("Motion"), filed on June 7, 2005. ICNU does not object to entry of a standard protective order to govern the disclosure of confidential information in this Docket. ICNU does, however, object to PSE's request for a modified protective order with "highly confidential" provisions that will impose unreasonable restrictions on outside counsel and consultants who seek access to highly confidential information in this proceeding.

2 ICNU requests that the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") deny PSE's Motion and issue a standard protective order. PSE has not demonstrated that blanket authority to designate information as highly confidential is warranted at this point in this Docket and that the standard protective order would provide

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inadequate protection. In addition, PSE has not demonstrated that its need for a highly confidential designation outweighs the undue burden of the Company's proposed restrictions.

3 If the Commission adopts a modified protective order with highly confidential provisions, it should use the form of highly confidential protective order that the Commission issued in PSE's 2003 Power Cost Only Rate Case ("PCORC") in Docket No. UE-031725.[1/] In that case, which involved very similar information to that at issue here, PSE agreed to requirements for outside counsel and consultants who seek access to highly confidential information that were significantly less burdensome and more well-defined than the restrictions currently proposed by PSE.

ARGUMENT

4 The Commission should deny PSE's Motion because: 1) the Company has not justified the need for authority to designate information as highly confidential; and 2) the restrictions that PSE seeks to place on outside counsel and consultants who seek access to highly confidential information are overly broad, unduly burdensome, and vague. PSE's request for authority to designate information as highly confidential is based primarily on speculation about the risk of competitive harm to third-party respondents to the Company's Requests for Proposals ("RFP") and the potential impact of any such harm on future RFPs. These claims are insufficient to justify the highly confidential designation.

5 In addition, as indicated in Attachment A to this Response, Don Schoenbeck, the consultant who appeared for ICNU in both PSE's 2003 PCORC and the Company's last general rate case, is unwilling to sign PSE's proposed "Highly Confidential Information Agreement"

1/ WUTC v. PSE, WUTC Docket No. UE-031725, Order No. 5 at ¶ 4 (Dec. 10, 2003).

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(Exhibit C to PSE's proposed amended protective order), because the unreasonable restrictions in that agreement would effectively prohibit Mr. Schoenbeck, for a period of three years, from providing the consulting services he has provided in the past. If the Commission adopts an amended protective order with highly confidential provisions, it should include in the order the language agreed to by the parties, and required by the Commission, in the 2003 PCORC protective order. The agreement from the 2003 PCORC provided sufficient protection for the information that PSE designated highly confidential in that proceeding, and it is sufficient for the purposes of this proceeding as well.

A. PSE Has Not Justified Its Request for Authority to Designate Information Highly Confidential

6 PSE identifies two types of information that it seeks to designate highly confidential. First, the Company specifically identifies the information obtained in responses to the Company's RFPs from late 2003 and early 2004.[2/] Second, PSE identifies information that the Company describes generally as "sensitive . . . analyses or negotiating strategies with respect to ongoing resource acquisitions and/or negotiations or related litigation."[3/] PSE has not demonstrated that this information meets the requirements of the Commission's rules governing the issuance of amended protective orders with highly confidential provisions. WAC 480-07-423 provides:

> The 'highly confidential' designation is reserved for information the dissemination of which, for example, imposes a highly significant risk of competitive harm to the disclosing party without enhanced protections provided in the commission's protective order. A party that wishes to designate information as highly

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2/ Motion at 3.
3/ Id.

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> confidential must first file a motion for an amendment to the standard protective order, supported by a sworn statement that sets forth the specific factual and/or legal basis for the requested level of protection and an explanation of why the standard protective order is inadequate. The motion and sworn statement must identify specific parties, persons, or categories of persons, if any, to whom a party wishes to restrict access, and state the reasons for such proposed restrictions.

The Commission should deny PSE's Motion because: 1) PSE has not demonstrated a significant risk of competitive harm to the Company without the enhanced protections in the proposed Highly Confidential Information Agreement; and 2) the Company has not explained why the standard protective order is inadequate to protect against the asserted harms.

1. PSE Has Not Sufficiently Demonstrated a Substantial Risk of Competitive Harm from Disclosing the RFP Responses to ICNU

7 PSE claims that the information provided in response to the Company's RFPs "is extremely commercially sensitive because these owners and developers are competing against each other . . . ."[4/] PSE argues that "such materials should not be viewed at all by persons involved in the development of energy projects or resources, or their consultants or advisers" because there is a significant risk of competitive harm if "parties who are competitors or potential competitors of each other . . . are able to access the information PSE has designated 'highly confidential' merely by intervening in the PCORC proceeding."[5/] As described below, PSE's arguments are unpersuasive for a number of reasons.

4/ WUTC v. PSE, WUTC Docket No. UE-050870, Declaration of Eric M. Markell in Support of PSE's Motion at 2 (June 6, 2005) ("Markell Declaration").

5/ Motion at 3, 4.

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a. PSE's Motion is Based Primarily on Allegations of Potential Harm to Parties Other than the Company

8 WAC 480-07-423 specifically states that a highly confidential designation is appropriate if there is a significant risk of competitive harm *to the disclosing party*.[6/] Here, the disclosing party is PSE, not the third-party RFP respondents. The rules governing the highly confidential designation do not provide that such a designation is appropriate based on a risk of harm to third parties. PSE argues that the highly confidential protection is necessary because the Company executed confidentiality agreements with the RFP respondents that require the Company to seek the "highly confidential" designation for the RFP information.[7/] Attachment B to this Response is a copy of the mutual confidentiality agreement ("Mutual Confidentiality Agreement") that the Commission approved as part of the Company's All Generation resources RFP in November 2003.[8/] The fact that PSE executed such an agreement with RFP respondents does not justify granting highly confidential protection. The Motion must be considered on its own terms.

9 In addition, although the Mutual Confidentiality Agreement appears to require the Company to seek a highly confidential protective order, the agreement is silent regarding the restrictions imposed under any such highly confidential designation. Since the Commission

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[6/] WAC 480-07-423 (emphasis added). PSE's statement that a party will obtain confidential information "merely by intervening in this PCORC proceeding" exaggerates the access to confidential information that will exist in the absence of the highly confidential designation. Motion at 4. ICNU urges the Commission to issue a standard protective and require any party seeking confidential information in this proceeding to agree to its terms.

[7/] Motion at 3.

[8/] Re PSE, WUTC Docket No. UE-031353, Request for Proposals for All Generation Resources, Exh. 7, Confidentiality Agreement (Nov. 23, 2003). The Commission approved this form of agreement on January 28, 2004. Re PSE, WUTC Docket No. UE-031353, Order No. 4 (Jan. 28, 2004).

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approved the amendment to the 2003 PCORC protective order on December 10, 2003, and PSE's Mutual Confidentiality Agreement was approved as part of the RFP on January 28, 2004, RFP bidders could reasonably have expected that the highly confidential restrictions would be similar to those adopted in the 2003 PCORC. PSE has not justified the overly broad and burdensome restrictions that it currently proposes.

10 The only potential harm of disclosure that PSE alleges to the Company is: 1) developers or owners should not be able to "game" the RFP process by having access to competitors' confidential information; and 2) if PSE wants to attract a "broad slate" of responses to future RFPs, developers and owners must be confident that their information will be protected.[9/] PSE's first alleged harm applies primarily to the RFP respondents rather than PSE, which is insufficient to justify heightened protection. PSE's second claim is based on an entirely speculative harm to a future RFP process.

b. There Is No Indication That Any Competitors of the RFP Respondents Will Intervene in this Proceeding

11 PSE also claims that disclosure of the RFP responses to competing owners or developers of energy projects poses a significant risk of competitive harm to the RFP respondents, but there is no indication that any competing owners or developers will seek to intervene in this proceeding. Indeed, PSE acknowledges in the context of the need for a "confidential" designation for information regarding short-term electric portfolio management and strategies, that "it is not anticipated that any entities that should not see such materials will

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[9/] Markell Declaration at 2. The RFPs that PSE issued in late 2003 and early 2004 were conducted while the 2003 PCORC was being litigated, and PSE has not asserted any harm or "gaming" in those RFP processes as a result of the disclosure of highly confidential information in the 2003 PCORC under the less restrictive terms of the 2003 PCORC protective order.

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intervene in this PCORC proceeding."[10/] PSE does not, however, recognize that there is no indication that competitors of the RFP respondents will intervene either. If competing entities do intervene and request the RFP information, then it may be appropriate for PSE to restrict those particular entities' access to the information at issue at that time.

12 The restrictions in PSE's proposed Highly Confidential Information Agreement assume that outside counsel and consultants who receive highly confidential information will disclose or otherwise improperly use highly confidential information if they work for energy developers or potential competitors of an RFP respondent, but the Company has not provided any basis for that assumption. Furthermore, the restrictions in the proposed Highly Confidential Information Agreement also assume that outside counsel and consultants who receive highly confidential information will be "tainted" by receipt of the RFP information and, as a result, the only way to prevent misuse of that information is to prevent those individuals from performing any work for any potential competitor or resource owner for a period of three years. The basis for this restriction appears to be that outside counsel and consultants will be unable to provide services to potential competitors or resource owners without being biased by the information received in this proceeding. This position is untenable. The specific problems with such overly broad restrictions are described in detail below, but the Company's unsupported assumptions about misuse of the RFP information by outside counsel and consultants do not justify issuance of a highly confidential protective order.

[10/] Motion at 3.

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c. PSE Has Not Shown That the Standard Protective Is Inadequate

13 The Commission also should deny PSE's Motion because the Company has not shown that the standard protective order is inadequate to prevent disclosure of the RFP information to competitors of the RFP respondents. As described above, the fact that PSE executed a confidentiality agreement as part of the RFP process does not justify authorizing the highly confidential designation instead of using the standard protective order. Furthermore, the restrictions in PSE's proposed Highly Confidential Information Agreement are based primarily on the assumption that outside counsel and consultants will improperly disclose or use the information obtained in the PCORC in advising clients in the future. Even if there were any basis for that assumption, the standard protective order sufficiently protects against such disclosures.

2. PSE's Negotiating Strategies and Resource Cost Information Do Not Warrant a Highly Confidential Designation

14 PSE also requests the highly confidential designation with respect to information that the Company describes generally as "sensitive . . . analyses or negotiating strategies with respect to ongoing resource acquisitions and/or negotiations or related litigation."[11/] PSE claims that "release of such information to owners or developers of project resources or to counterparties with whom the Company is negotiating would harm the Company and its customers . . . ."[12/] As an initial matter, PSE's vague description of this information provides no justification for heightened protection. PSE's description encompasses much of the information that has been provided under the standard protective order in previous proceedings and PSE

11/ Motion at 3.
12/ Markell Declaration at 3.

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provides no indication of the particular sensitivity of this information. This information does not warrant a highly confidential designation for all of the reasons described above.

B. PSE's Proposed Highly Confidential Information Agreement Will Hinder Intervenors from Participating in this Proceeding

15 PSE's proposed Highly Confidential Information Agreement imposes overly broad and unduly burdensome restrictions on outside counsel and consultants who seek access to highly confidential information. As explained in Attachment A to this Response, ICNU's consultant, Don Schoenbeck, is unwilling to sign the Highly Confidential Information Agreement proposed by PSE because it would preclude him from performing much of the work that he typically performs for the next three years, which would have a substantial detrimental impact on his firm. Outside counsel and consultants should not be forced to submit to the overly restrictive terms of PSE's Highly Confidential Information Agreement in order to participate in the PCORC, especially when less burdensome and adequately protective measures are available.

16 The specific restrictions that PSE seeks to impose on outside counsel and consultants for Staff, Public Counsel, and intervenors are stated in the proposed protective order as follows:

> [I am] not now involved, and will not for a period of three years involve myself in, competitive decision making with respect to which the Highly Confidential 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 that disclosed the Highly Confidential Information; and
>
> [I am] not now involved, and will not for a period of three years involve myself in, the ownership or development of natural gas or electric energy projects or resources, or the provision of counsel or

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> consulting services to persons or entities that are owners or developers of such energy projects or resources[.][13/]

For the reasons described below, this language is overly broad, unduly burdensome, and imposes vague restrictions that create uncertainty for the signing party.

1. The Overly Broad Language Proposed by PSE Precludes Providing Services to Any Potential Competitor or Resource Owner

17 PSE's proposed language is overly broad in that it restricts the individuals who sign the agreement and the activities that those individuals engage in, rather restricting the use of the particular information at issue in PSE's Motion. This restriction casts too broad a net because it would create a three-year prohibition for energy consultants and attorneys from advising any owner or developer of energy or natural gas resources. This effectively would prevent such individuals from maintaining their practices.[14/]

18 The second paragraph of the proposed language prohibits the signing party from being involved in the "ownership or development of electric energy or natural gas resources" or the "provision of counsel or consulting services to persons or entities that are owners or developers of such energy projects or resources."[15/] By its terms, this restriction applies to all legal or consulting services provided to any resource owner or developer regardless of whether the entity competes with PSE or an RFP respondent or whether the services provided relate to energy matters or information received in the PCORC. For example, counsel who sign the agreement would be prohibited from representing a paper company that develops an energy

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[13/] Motion at Exhibit A at 7.
[14/] See Attachment A.
[15/] Motion at Exhibit A at 7.

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resource at one of their facilities, even if that representation is in regard to a matter entirely unrelated to that resource. As described above, the theory behind this prohibition appears to be that outside counsel and consultants will be so biased by the receipt of highly confidential information in this proceeding that they must be precluded altogether from providing services to any resource developer or owner on any matter in order to prevent potential harm to PSE, the RFP respondents, or the RFP process. This deviates dramatically from the forms of protection typically applied to sensitive information, which apply to the use and disclosure of the information rather than restricting the activities of the individual even on unrelated matters. There is simply no basis for protecting the information at issue in PSE's Motion with such overly broad and unduly restrictive measures.

19 With respect to the first paragraph quoted above, PSE apparently intends to apply those prohibitions to competitors of not only the Company itself, but also to competitors of the RFP respondents. This creates an expansive, but ill-defined, group of entities that may fall under the scope of the agreement as entities that "potentially compete" with PSE or an RFP respondent. Although PSE did not identify any of the RFP respondents in its Motion, the Company's prefiled testimony indicates that PSE received forty-seven proposals from thirty-nine different owners/developers.[16/] It is conceivable, under these circumstances, that most utilities and energy developers in the Western United States could compete or "potentially compete" with one or more of the RFP respondents. In addition, since counsel and consultants do not know the RFP

16/ WUTC v. PSE, WUTC Docket No. UE-050870, Prefiled Direct Testimony of Eric M. Markell, Exhibit No. ___ (EMM-1HCT) at 9 (June 7, 2005).

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respondents' identities at this point, it would be impossible to agree that they do not and will not work for entities that compete, or potentially compete, with the respondents.

2. The Unduly Burdensome Protections of the Proposed Agreement Significantly Outlast PSE's Mutual Confidentiality Agreement from the RFP and the Relevance of the RFP Information

20 The proposed Highly Confidential Information Agreement is unduly burdensome in light of the restrictions in the Mutual Confidentiality Agreements that were approved as part of PSE's RFP. As described above, although the RFP confidentiality agreement attached as Attachment B requires PSE to seek a highly confidential designation for the RFP responses, it does not dictate the particular requirements that apply under that designation. In short, PSE does not need to preclude outside counsel and consultants from performing work on any matter for any resource developer or owner in order to act in accordance with the Mutual Confidentiality Agreement. PSE has chosen the overly broad and unduly burdensome requirements in the proposed Highly Confidential Information Agreement despite the fact that the Company agreed to less restrictive language in the 2003 PCORC.

21 The proposed Highly Confidential Information Agreement also is unduly burdensome because the restrictions apply for a period of three years. In contrast, the Mutual Confidentiality Agreement from the RFP only lasts for two years from the effective date, and those agreements likely were executed long in advance of this proceeding. It is inexplicable why outside counsel and consultants who seek access to highly confidential information in this PCORC should be restricted in the activities that constitute their livelihood for three years, when the confidentiality agreement upon which PSE bases its request for the highly confidential designation will be in effect for only two years.

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22 Finally, PSE seeks protection for responses to RFPs issued in late 2003 and early 2004. The RFP responses are approximately eighteen months old at this point and the information likely is stale. Even if the information is not stale already, however, individuals who sign PSE's proposed Highly Confidential Information Agreement would be prohibited from advising any resource owner or developer for another thirty-six months. By that time, the information at issue will be almost five years old and will certainly be stale. This is simply an unnecessarily burdensome restriction to impose in this proceeding.

3. The Vague Terms in the Agreement Create Uncertainty for Signatories

23 The problems associated with the overly broad and unduly burdensome nature of the proposed Highly Confidential Information Agreement are only compounded by the fact that certain key terms of the agreement are vague and undefined. The proposed agreement does not define "competitive decision making," which is a key term in the first paragraph quoted above. Furthermore, as described above, it is impossible for parties to determine at this point or in the future what clients may "potentially compete" with PSE or an undisclosed RFP respondent. Finally, there is no basis upon which to determine when information obtained in the PCORC "may be relevant" to "competitive decision making" in a particular context. Without any definition of these important terms of the proposed agreement, signatories would be unable to determine when the agreement applies.

C. The 2003 PCORC Protective Order Provides a Less Restrictive and Adequately Protective Alternative

24 If the Commission issues a modified protective order with highly confidential provisions, it should revise PSE's proposed Highly Confidential Information Agreement to

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reflect the language adopted by the Commission and agreed to by PSE in the 2003 PCORC. The protective order in that proceeding required outside counsel and consultants to declare that:

> [I] do not now, and will not for a period of three years, use highly confidential documents or information contained in highly confidential documents obtained in this docket, to advise, counsel, or consult on the design, development, marketing, pricing, sale or procurement, of any product, service, or energy generation facility, for any company or business organization that competes, or is actively considering competing, with the company or business organization producing the information.[17/]

The restrictions in the 2003 PCORC protective order applied to the *information* at issue rather than the individual, provided more certainty with respect to the prohibited activities, and did not require an individual to predict whether a client would "potentially compete" in the future. If the Commission determines that a highly confidential designation is warranted, these restrictions provide ample protection against the harms asserted by PSE.

25 The issuance of the 2003 PCORC protective order involved a very similar set of circumstances as the current proceeding in that PSE was seeking a highly confidential designation in that case for the responses of over seventy power project owners and developers to resource proposals solicited by the Company.[18/] The 2003 PCORC protective order adequately protected the information at issue in that proceeding, and PSE has not justified the more burdensome requirements it proposes to apply to individuals receiving the same type of information in this case. In fact, PSE's request merely forces parties to re-litigate procedural issues that were resolved in previous proceedings with similar facts.

[17/] WUTC v. PSE, WUTC Docket No. UE-031725, Order No. 5 at ¶ 4 (Dec. 10, 2003).

[18/] WUTC v. PSE, WUTC Docket No. UE-031725, PSE's Motion for Protective Order With "Highly Confidential" Provisions at 2 (Oct. 24, 2003).

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26 It is unreasonable to conclude that a party could fully participate in this case without having access to highly confidential information. Although PSE states that it expects to designate only a minimal amount of information highly confidential, the Company's historical practices belie that claim. In the 2003 PCORC, PSE designated voluminous amounts of materials as highly confidential, including the entire data set to the Company's AURORA power cost model. ICNU received 29 responses to data requests and eight CD-ROMs that included highly confidential information in that proceeding. Certain pieces of this information were critical to ICNU's case, and ICNU's participation in the 2003 PCORC would have been hindered without access to the highly confidential information.

27 In the present case, PSE designated thirty-two exhibits in its direct testimony as highly confidential, while only six were designated confidential. Furthermore, the information that is designated highly confidential appears to include basic power cost-related values, which typically are among the most important information in a power cost proceeding. It is unreasonable to conclude that a party could fully and effectively participate without signing the protective order and having access to this information, especially when consultants who regularly appear in WUTC proceedings are unwilling to sign PSE's proposed Highly Confidential Information Agreement in its current form.

CONCLUSION

28 PSE's request for authority to designate information as highly confidential is unjustified and would impose unreasonable restrictions on outside counsel and consultants participating in this proceeding. The Commission should deny PSE's Motion and issue a standard protective order. If, however, the Commission decides that a protective order with

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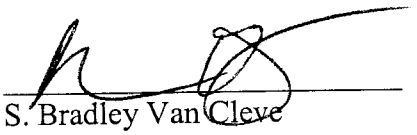
highly confidential provisions is warranted, the Commission should adopt the provisions of the 2003 PCORC protective order stated above as part of the highly confidential information agreement.

DATED this 17th day of June, 2005.

Respectfully Submitted,



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Of Attorneys for the Industrial Customers of Northwest Utilities

ATTACHMENT A

RCS

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June 16, 2005

Dear Mr. Van Cleve:

At your request, I have reviewed Puget Sound Energy's ("PSE") proposed Amended Protective Order with Highly Confidential Provisions in Washington Utilities and Transportation Commission ("WUTC") Docket No. UE-050870, including the proposed Exhibit C ("Highly Confidential Information Agreement"). For the reasons explained below, I am not in a position to execute the Highly Confidential Information Agreement for the purpose of receiving "highly confidential" information in this proceeding.

1. I am a member of Regulatory & Cogeneration Services, Inc. ("RCS"), a utility rate and economic consulting firm. I have been involved in the electric and gas utility industries for over 30 years. For the majority of this time, I have provided consulting services for large industrial customers addressing regulatory and contractual matters before numerous state commissions including the WUTC, public utility governing boards, governmental agencies, state and federal courts, the National Energy Board of Canada, and the Federal Energy Regulatory Commission.

2. RCS provides consulting services in the field of public utility regulation to many clients, including large industrial and institutional customers. We also assist in the negotiation of contracts for utility services for large users and participate in avoided cost pricing proceedings in California on behalf of independent power producers. In general, we are engaged in regulatory consulting, rate work, feasibility, economic and cost-of-service studies, design of rates for utility service, and contract negotiations for clients in the Western United States.

3. I am unable to execute an agreement in the form of the Highly Confidential Information Agreement because of the requirements of paragraphs 'a' and 'b' of that Agreement. Specifically, paragraphs 'a' and 'b' require me to declare, under penalty of perjury, that:

    a. I am not now involved, and will not for a period of three years involve myself in, competitive decision making with respect to which the Highly Confidential 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 that disclosed the Highly Confidential Information; and

b. I am not now involved, and will not for a period of three years involve myself in, the ownership or development of natural gas or electric energy projects or resources, or the provision of counsel or consulting services to persons or entities that are owners or developers of such energy projects or resources[.]

4. The prohibitions in paragraphs 'a' and 'b' would preclude me and other members of RCS' professional staff from engaging in a substantial portion of the work in which we have traditionally been involved over the years. This broad prohibition would prevent RCS from providing services to many of the entities in the energy industry in the Western United States and would last for a period of three years. Agreeing to not engage in the activities described in paragraphs 'a' and 'b' of the proposed Highly Confidential Information Agreement for a period of three years would have a significant, deleterious impact on my livelihood and the economic viability of RCS.

5. I appeared as a witness on behalf of the Industrial Customers of Northwest Utilities in both PSE's last general rate case (Docket Nos. UE-040640 and UG-040641) and in the Company's 2003 Power Cost Only Rate Case (Docket No. UE-031725). I executed the protective order agreement in both of those cases and was permitted to receive "highly confidential" information in those proceedings. Neither of the protective orders in those proceedings required an outside expert to execute an agreement with the restrictions currently proposed by PSE.

Very truly yours,

Donald W. Schoenbeck
Regulatory & Cogeneration Services, Inc.

ATTACHMENT B

MUTUAL CONFIDENTIALITY AGREEMENT

This Agreement, dated as of _____, 2004, is entered into between Puget Sound Energy, Inc., ("PSE") and _____. PSE and _____ are sometimes referred to in this Agreement as "Party," and collectively as "Parties."

1. The Parties intend to enter into discussions regarding one or more potential transactions between the Parties involving the acquisition of electrical generation output or an interest in power generation facilities in _____ (or both). In the course of these discussions, each Party may disclose Confidential Information to the other. For the purposes of this Agreement, "Confidential Information" means any information or data disclosed in connection with such discussions in any form or media whatsoever by either Party (the "Disclosing Party") to the other Party (the "Receiving Party") which (a) if in tangible form, or other media that can be converted to readable form, is clearly and conspicuously marked as proprietary, confidential or private on each page thereof when disclosed; or (b) if oral or visual, is identified in writing as proprietary, confidential or private at the same time it is disclosed. "Confidential Information" includes all originals, copies, notes, correspondence, conversations and other manifestations, derivations and analysis of the foregoing.

2. Confidential Information shall not include information that (a) is or becomes generally available to the public other than by reason of the Receiving Party's breach of this Agreement; (b) the Receiving Party can reasonably demonstrate (i) was known by the Receiving Party, prior to its disclosure by the Disclosing Party, without any obligation to hold it in confidence, (ii) is received from a third party free to disclose such information without restriction, (iii) is independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party; (c) is approved for release by written authorization of the Disclosing Party, but only to the extent of such authorization; or (d) is related to the transmission of power, including but not limited to, any information which must be disclosed to the transmission function of a Party as part of any transmission request or information exchange that is required to be made public pursuant to FERC rules and regulations. Notwithstanding anything to the contrary set forth in this Agreement, the Receiving Party shall not be obligated to keep confidential any Confidential Information that (A) is required by law or regulation to be disclosed (including, without limitation, any summary or ranking of any proposal by the Disclosing Party constituting Confidential Information that PSE is required by law to make available to the public), but only to the extent and for the purposes of such required disclosure or (B) is disclosed in response to a valid order or request of a court or other governmental authority having jurisdiction or in pursuance of any procedures for discovery or information gathering in any proceeding before any such court or governmental authority, but only to the extent of and for the purposes of such order, provided that the Receiving Party, who is subject to such order or discovery, give the Disclosing Party reasonable advance notice (e.g., so as to afford the Disclosing Party an opportunity to appear, object and obtain a protective order or other appropriate relief regarding such disclosure). The Receiving Party, who is subject to such order or discovery, shall, at the Disclosing

Party's expense, use reasonable efforts to assist the Disclosing Party's efforts to obtain a protective order or other appropriate relief.

3. The Parties acknowledge that PSE is a public utility regulated by the Washington Utilities and Transportation Commission ("Commission") and that its decisions regarding one or more potential transactions between the Parties involving the acquisition of electrical generation output or an interest in power generation facilities, together with related Confidential Information, may be subject to review by the Commission. Notwithstanding the provisions of Section 2, in the event that such PSE decisions are at issue in a proceeding before the Commission, PSE will seek, at its own expense, a protective order from the Commission with "highly confidential provisions" to protect against the disclosure of Confidential Information to competitors and the public. Disclosure of Confidential Information by either of the Parties to the Commission, its staff or its advisors in connection with any such proceeding will not violate this Agreement.

4. Notwithstanding any other provision of this Agreement, the confidentiality obligations in this Agreement shall not apply to the "tax structure" or "tax treatment" (as these terms are defined in Section 1.6011-4(c)(8) and (9), or any successor provision, of the Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended (the "Code")) of the potential transactions discussed, and each party (and any Representative of each party) may disclose to any and all persons, without limitation of any kind, the "tax structure" and "tax treatment" (as these terms are defined in Sections 1.6011-4(c)(8) and (9), or any successor provision, of the Treasury Regulations) of the potential transactions discussed; provided that the confidentiality provisions of this Agreement shall continue to apply to Confidential Information irrelevant to understanding the tax structure or tax treatment of the potential transactions discussed. In addition, each party acknowledges that it has no proprietary or exclusive right to any tax matter or tax idea related to the potential transactions. Each party recognizes that any privilege it may have with respect to the confidentiality of the discussions, including with respect to confidential communications with an attorney or a federally authorized tax practitioner under Section 7252 of the Code, is not intended to be waived by the foregoing.

5. The Receiving Party shall, subject to the other provisions of this Agreement, (a) use the Confidential Information only for purposes of evaluating one or more potential transactions between the Parties involving power generation facilities; (b) restrict disclosure of the Confidential Information to employees, advisors and active or potential investors or lenders of the Receiving Party and affiliates with a "need to know" and not disclose it to any other person or entity without prior written consent of the Disclosing Party; (c) advise such employees, advisors, investors and lenders who access the Confidential Information of their obligations with respect thereto; and (d) copy the Confidential Information only as necessary for those employees or advisors who are entitled to receive it, and ensure that all confidential notices are reproduced in full on such copies. A "need to know" means that the employee or advisors require the

Confidential Information to perform their responsibilities in evaluating or pursuing one or more potential transactions between the Parties involving power generation facilities.

6. Confidential Information shall be deemed to be the property of the Disclosing Party. This Agreement shall not be interpreted or construed as granting any license or other right under or with respect to any patent, copyright, trademark, trade secret or other proprietary right. The Receiving Party shall, within 30 days of a written request therefor by the Disclosing Party, either return all of the Disclosing Party's Confidential Information (or any designated portion thereof) to the Disclosing Party or destroy all such Confidential Information (or any designated portion thereof) and provide an officer's certificate as to the destruction of such Confidential Information; provided, that PSE, as a Receiving Party, shall not be obligated to return to the Disclosing Party any proposal by the Disclosing Party, or any information related thereto, constituting Confidential Information, and PSE may retain all such proposal and information for a period of at least 7 years or until PSE concludes its next general electric rate case, whichever is later.

7. Neither this Agreement nor any discussions or disclosure hereunder shall (a) be deemed a commitment to any business relationship or contract for future dealing with another Party or (b) prevent either Party from conducting similar discussions with any third party, so long as such discussions do not result in the use or disclosure by the Receiving Party of Confidential Information protected by this Agreement. If the Parties elect to proceed with any transaction, then all agreements, representations, warranties, covenants and conditions with respect thereto shall be only as set forth in a separate written agreement to be negotiated and executed by the Parties.

8. Each of the Parties acknowledges that the Confidential Information received from another Party constitutes valuable confidential, commercial, business and proprietary information of the Disclosing Party and serious commercial disadvantage or irreparable harm may result for the Disclosing Party if the Receiving Party breaches its nondisclosure obligations under this Agreement. In such event or the threat of such event, the Disclosing Party shall be entitled to injunctive relief, specific performance and other equitable relief without proof of monetary damages. In any action to enforce this Agreement or on account of any breach of this Agreement, the prevailing Party shall be entitled to recover, in addition to all other relief, its reasonable attorneys' fees and court costs associated with such action.

9. This Agreement may not be assigned by either Party without the prior written consent of the other Party. No permitted assignment shall relieve the Receiving Party of its obligations hereunder with respect to Confidential Information disclosed to it prior to such assignment. Any assignment in violation of this Paragraph 8 shall be void. This Agreement shall be binding upon the Parties' respective successors and assigns.

10. This Agreement shall be deemed to be effective as of the date first above written, and shall continue thereafter for a period of two (2) years.

11. No Party shall be liable to another Party for any consequential, indirect, incidental, special, exemplary or punitive damages arising out of or related to this Agreement.

12. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state of Washington, without regard to such state's choice of law principles to the contrary. Each of the Parties irrevocably consents to the exclusive jurisdiction and venue of any state or federal court located in King County, Washington, with regard to any legal or equitable action or proceeding related to this Agreement.

13. This Agreement represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto. The provisions of this Agreement shall not be modified, amended or waived, except by a written instrument duly executed by both of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of _____ _____, 2004.

PUGET SOUND ENERGY, INC.

By _____

Its _____

[OTHER PARTY]

By _____

Its _____