

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

Docket No. UG-040640

Docket No. UE-040641

PUGET SOUND ENERGY, INC.'S
MOTION FOR AMENDED STANDARD
PROTECTIVE ORDER WITH "HIGHLY
CONFIDENTIAL" PROVISIONS

In the Matter of the Petition of

PUGET SOUND ENERGY, INC.,

For an Order Regarding the Accounting
Treatment For Certain Costs of the
Company's Power Cost Only Rate Filing

Docket No. UE-031471

In the Matter of the Petition of

PUGET SOUND ENERGY, INC.,

For an Accounting Order Authorizing
Deferral and Recovery of Investment and
Costs Related to the White River
Hydroelectric Project

Docket No. UE-032043

1

Pursuant to WAC 480-07-375, WAC 480-07-420(2), and WAC 480-07-423(1)(b), Puget Sound Energy, Inc. ("PSE" or "the Company") requests that the Commission enter a protective order in this proceeding that is slightly different than the current "standard form"

PSE'S MOTION FOR AMENDED
PROTECTIVE ORDER - 1

[07771-0089/BA041170.053]

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of protective order. PSE further requests that the protective order include provisions that provide for designation and protection of "highly confidential" information. A proposed form of protective order, including the "highly confidential" provisions, is attached to this motion as Exhibit A.

I. ARGUMENT

A. Background Regarding Valuable Commercial Information that Requires Protection in this Case

2 This general rate case proceeding brings into issue a broad range of information about the Company, including its financial circumstances, resources available to meet its customers' loads, strategies and analysis related to the Company's resource portfolio, and future projections regarding such matters. Such information may also be explored in the accounting petition dockets that have been consolidated into the general rate case proceedings.

3 The Company needs to designate projections regarding future financial performance and related information as "confidential." Information regarding financial projections constitutes material nonpublic information of the Company. Under Rule 100(a) of Regulation FD under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the selective disclosure of material nonpublic information is prohibited without simultaneously making broad, non-exclusionary distribution of the information to the public by means of a press release or Form 8-K filing with the Securities and Exchange Commission ("SEC"). Although selective disclosure to government agencies is not prohibited under Regulation FD, the financial projections would be part of a public record and, therefore, may fall within the scope of prohibited disclosure. Once disclosed publicly, although the case law in the area is not settled, the Company may have a duty to publicly

update the projections in the future to prevent them from becoming misleading and subjecting the Company to disclosure liability under Rule 10b-5 under the Exchange Act. *See e.g. In re Burlington Coat Factory*, 114 F.3d 1410 (3d Cir. 1997); *In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259 (2d Cir. 1993). The Company is not staffed and does not have processes in place to provide such updates on an ongoing basis, thus it is the Company's policy *not* to publicly disclose its financial projections. Mandating such disclosure would impose an undue burden on the Company and would likely ultimately work to its customers' disadvantage.

4 The Company must also protect information about its portfolio management strategies, details regarding its approach to energy market transactions and hedging, and characteristics of individual generating units in order to preserve its negotiating strength with potential counterparties to wholesale energy transactions. As described in the Declaration of Julia M. Ryan, PSE's Vice President of Risk Management and Strategic Planning, filed herewith, if potential competitors, including potential counterparties, have access to such materials through filings, data request responses or exhibits in Commission dockets, or from persons who have had access to such materials, they could use that information to the Company's disadvantage in proposing or negotiating purchases or sales of energy or natural gas to or from the Company. The likely result would be increased costs for the Company and, ultimately, its customers.

5 The Company is also occasionally required or expected to keep confidential details of transactions it has entered into and/or information provided by third parties.

6 Finally, parties to this proceeding may request other types of information not listed above that is commercially valuable to the Company that should be protected from public

disclosure or to persons who might make use of such information to the Company's detriment outside the scope of this proceeding.

B. The Protective Order in this Case for Confidential Documents Should Be in the Amended Form Approved in Docket No. UE-031389 (the "PCA Compliance Docket").

7 In the PCA Compliance Docket, PSE was concerned that knowledge gained about its portfolio management strategies, particularly its approach to energy market transactions and hedging, should not be used against PSE in energy markets. The Company raised the concern that persons active in the industry, including consultants for Staff, Public Counsel and other parties, may provide advice to competitors of the Company, currently or at some future time, outside of the services provided with respect to particular Commission proceedings. The Company believes that the Commission's current "standard form" protective order prohibits attorneys, consultants, and all others who may have access to confidential information in Commission proceedings from sharing such information with others or from using such information to the advantage of their clients or others outside of the specific proceeding where they gained access to the information. However, the Company proposed that the standard protective order should be clarified to emphasize this prohibition.

8 The Company therefore worked with the other parties in the PCA Compliance Docket to draft language modifying the standard protective order. The parties ultimately agreed on the following underlined language amending Paragraph 7 of the standard protective order, which was approved in Order No. 03, Order Amending Protective Order, Docket No. UE-031389 (Oct. 7, 2003):

Purpose of Access and Use; Confidentiality. No Confidential Information distributed or obtained pursuant to this protective order may be requested, reviewed, used or disclosed, directly or indirectly, by any party, expert or counsel or any other person having access

pursuant to this order, except for purposes of this proceeding. Persons having access to the Confidential Information pursuant to this order must request, review, use or disclose Confidential Information only by or to persons authorized under this Order, and only in accordance with the terms specified in this Order. Without limiting the foregoing, persons having access to Confidential Information shall not use any Confidential Information to design, develop, provide, or market any product, service, or business strategy that would compete with any product or service of the party asserting confidentiality.

9 PSE will be providing the same type of sensitive and strategic resource portfolio and hedging information in this general rate case proceeding. PSE will also be providing financial projections that all persons having access to such material should be prohibited from using for purposes outside of this proceeding. PSE therefore requests that a protective order be issued in this proceeding containing the amended language that was approved in the PCA Compliance Docket. *See Proposed Protective Order at ¶ 12, Purpose of Access and Use; Confidentiality.*

C. The Protective Order in this Case Should Provide for "Highly Confidential" Designation and Protections.

10 PSE is also requesting that the Commission enter a protective order that provides for designation and special protection of "highly confidential" information. Given the scope of a general rate case proceeding, it is likely that information will be requested or provided that "imposes a highly significant risk of competitive harm" to PSE without protections that go beyond the standard protective order. *See WAC 480-107-423(1)(b).*

11 The Company is not yet aware of the full scope of information that may need to be designated "highly confidential," and is committed to minimizing the volume of such

material. However, it has already identified in its initial filing one set of information that deserves such protection, as described below and in Ms. Ryan's declaration.

12 In order to evaluate how PSE's credit rating affects PSE's ability to enter into agreements with counterparties to hedging transactions, PSE conducted a survey of its major gas, power and financial counterparties. Through the survey, PSE obtained information regarding the amount of open (unsecured) credit that counterparties were willing to extend to PSE at (i) its current corporate debt rating, (ii) one level lower, and (iii) one level higher. An exhibit to Ms. Ryan's prefiled direct testimony showing the results of this survey have been included in PSE's prefiled direct testimony with a "highly confidential" designation. See Exhibit ____ (JMR-8HC). Workpapers underlying the exhibit have also been marked "highly confidential."

13 PSE believes such information deserves the "highly confidential" designation for two reasons. First, counterparties typically are reluctant to provide such information. They compete with each other to offer products to PSE and others and in many cases are themselves purchasers or sellers of energy and natural gas. The counterparties who provided this information did so with the expectation that PSE would handle the information discretely. Dissemination of this information beyond a very small number of recipients would almost certainly foreclose any possibility of a future exchange of information with counterparties regarding such issues. Second, PSE competes with other companies in the energy markets for access to hedging products and financing. Access to detailed information about which counterparties are prepared to extend what level of credit to PSE would create a significant risk of competitive harm to PSE as it seeks to negotiate future agreements.

For these reasons, the typical "highly confidential" restrictions that limit dissemination of such information are appropriate. Specifically,

Parties other than Public Counsel and Staff who seek disclosure of highly confidential documents or information must designate one outside counsel and no more than one outside consultant, legal or otherwise, to receive and review materials marked "Highly Confidential..." In addition to executing the appropriate Agreement required by this Protective Order for "Confidential Information" each person designated as outside counsel or consultant for review of "Highly Confidential" documents or information must execute an affidavit, under oath, certifying that:

- a. **They do not now, and will not for a period of five years, involve themselves in competitive decision making by 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.**
- b. **They have read and understand, and agree to be bound by, the terms of the Protective Order in this proceeding and by this Amendment to the Protective Order.**

* * *

Designated outside counsel will maintain the highly confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel has access. No additional copies will be made. If another person is designated for review, that individual must not remove the highly confidential documents or information, or any notes reflecting their contents, from the secure location. Any testimony or exhibits prepared that reflect highly confidential information must be maintained in the secure location until 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. Appropriate procedures for including such documents or information will be determined by the presiding Administrative Law Judge following consultation with the parties.

15 Entry of the requested amended and highly confidential protective order in this proceeding will permit the parties to proceed with discovery and filings in this general rate case proceeding and allow all parties to protect sensitive competitive or proprietary information as appropriate during the proceeding.

III. CONCLUSION

16 For the reasons stated above and in Ms. Ryan's declaration, PSE respectfully requests that the Commission enter the form of protective order that is attached to this Motion at Exhibit A.

DATED: May 3, 2004

Respectfully Submitted,



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EXHIBIT A: PROPOSED ORDER

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

Docket No. UG-040640

Docket No. UE-040641

[PROPOSED] PROTECTIVE ORDER
WITH "HIGHLY CONFIDENTIAL"
PROVISIONS

In the Matter of the Petition of

PUGET SOUND ENERGY, INC.,

For an Order Regarding the
Accounting Treatment For Certain
Costs of the Company's Power Cost
Only Rate Filing

Docket No. UE-031471

In the Matter of the Petition of

PUGET SOUND ENERGY, INC.,

For an Accounting Order Authorizing
Deferral and Recovery of Investment
and Costs Related to the White River
Hydroelectric Project

Docket No. UE-032043

1 The Commission finds that a protective order to govern disclosure of proprietary and confidential information is necessary in this proceeding. The Commission has reviewed Puget Sound Energy, Inc.'s Motion for Amended Protective Order

with "Highly Confidential" Provisions, provided the parties an opportunity to comment on the motion and proposed protective order, considered their comments, and finds as follows:

- 2 a. It is likely that proprietary and confidential information will be required to resolve the issues in this proceeding;
- 3 b. 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 finds that it is necessary to create a separate designation and a higher order of protection for documents asserted by parties to be highly confidential. This is consistent with the Commission's practice in prior cases involving assertions that certain documents require heightened protection to facilitate discovery.
- 5 Accordingly, the Commission enters the following protective order to govern the discovery and use of proprietary and confidential documents in this proceeding:

ORDER

A. General Provisions

- 6 **Confidential Information.** All access, review, use, and disclosure of any material designated by a party to this proceeding as confidential (referred to in this Order as "Confidential Information") is governed by this Order and by WAC 480-07-160. The Commission expects Confidential Information to include only numbers, customer names, and planning details. The Commission requires the parties to delete such information from the primary exhibits and provide these "confidential deletions" under separate cover in the manner described below. The Commission may *reject* a filing or any other submission that fails to segregate Confidential Information, or categorizes clearly public information as confidential.
- 7 Parties must scrutinize potentially confidential material, and limit the amount they designate "Confidential Information" to only information that truly might compromise their ability to compete fairly or that otherwise might impose a business risk if disseminated without the protections provided in this Order. The first page and individual pages of a document determined in good faith to include

Confidential Information must be marked by a stamp that reads: "Confidential Per Protective Order in WUTC Docket Nos. UG-040640, UE-040641, UE-031471 & UE-032043." Placing a Confidential Information stamp on the first page of an exhibit indicates only that one or more pages contains Confidential Information and will not serve to protect the entire contents of the multipage document. Each page that contains Confidential Information must be marked separately to indicate where confidential information is redacted. Confidential Information shall be provided on yellow or canary paper with references to where each number, customer name, or planning detail is redacted in the original document.

- 8 **Confidential and Redacted Versions.** Because the parties and the Commission are manipulating data and handling a number of open cases, and because confidentiality is more significant than it has been in the past, we must require complete confidential and redacted versions of testimony, exhibits, and briefs.
- 9 This extends to electronic versions, as well, and requires that **all diskettes** and **all electronic mail** specify whether the file is confidential, redacted, or public.
- 10 If a witness has a confidential portion of her testimony, the sponsoring party must provide a complete redacted version of the testimony and a complete confidential version, with confidential pages on color paper.
- 11 It also means that you must submit (at least) two diskettes and email one with the electronic version of the confidential text and one with the electronic version of the redacted text.
 - a. You **MUST** identify the confidential diskettes with prominent red markings and the word "confidential" in addition to the contents and the docket number. The others must be prominently labeled "redacted" or "public".
 - b. You **MUST** identify each confidential digital file with a C in the file name and **MUST** have the legend "CONFIDENTIAL PER PROTECTIVE ORDER IN WUTC DOCKET NOS. UG-040640, UE-040641, UE-031471 & UE-032043" prominently displayed on the first page (i.e., the page that appears on the computer screen when the file is opened).
 - c. You **MUST** identify each highly confidential digital file with an HC in the file name and **MUST** have the legend "HIGHLY CONFIDENTIAL PER PROTECTIVE ORDER IN WUTC DOCKET NOS. UG-040640, UE-040641, UE-031471 & UE-032043" prominently displayed on the first page (i.e., the page that appears on the computer screen when the file is opened).

- 12 **Purpose of Access and Use; Confidentiality.** No Confidential Information distributed or obtained pursuant to this protective order may be requested, reviewed, used or disclosed, directly or indirectly, by any party, expert or counsel or any other person having access pursuant to this order, except for purposes of this proceeding. Persons having access to the Confidential Information pursuant to this order must request, review, use or disclose Confidential Information only by or to persons authorized under this Order, and only in accordance with the terms specified in this Order. Without limiting the foregoing, persons having access to Confidential Information shall not use any Confidential Information to design, develop, provide, or market any product, service, or business strategy that would compete with any product of the party asserting confidentiality.

Disclosure of Confidential Information

- 13 **Persons Permitted Access.** No Confidential Information will be made available to anyone other than Commissioners, Commission Staff, the presiding officer(s), and counsel for the parties for this proceeding, including counsel for Commission Staff, and attorneys' administrative staff such as paralegals. However, access to any Confidential Information may be authorized by counsel, solely for the purposes of this proceeding, to those persons designated by the parties as their experts in this matter. Except for the Washington Utilities and Transportation Commission Staff, no such expert may be an officer, director, direct employee, major shareholder, or principal of any party or any competitor of any party (unless this restriction is waived by the party asserting confidentiality). Any dispute concerning persons entitled to access Confidential Information must be brought before the presiding officer for resolution.
- 14 **Nondisclosure Agreement.** Before being allowed access to any Confidential Information designated for this docket, each counsel or expert must agree to comply with and be bound by this Order on the form of Exhibit A (counsel and administrative staff) or B (expert) attached to this Order. Counsel for the party seeking access to the Confidential Information must deliver to counsel for the party producing Confidential Information a copy of each signed agreement, which must show each signatory's full name, permanent address, the party with whom the signatory is associated and, in the case of experts, the employer (including the expert's position and responsibilities). The party seeking access must also send a copy of the agreement to the Commission and, in the case of experts, the party providing Confidential Information shall complete its portion and file it with the Commission or waive objection as described in Exhibit B.
- 15 **Access to Confidential Information.** Copies of documents designated confidential under this Order will be provided in the same manner as copies of

documents not designated confidential, pursuant to WAC 480-07-160. Requests for special provisions for inspection, dissemination or use of confidential documents must be submitted to the presiding officer if not agreed by the parties. The parties must not distribute copies of Confidential Information to, and they must not discuss the contents of confidential documents with, any person not bound by this Order. Persons to whom copies of documents are provided pursuant to this Order warrant by signing the confidentiality agreement that they will exercise all reasonable diligence to maintain the documents consistent with the claim of confidentiality.

Highly Confidential Information

- 16 Intervenor 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. Any parties may receive discovery requests that call for the disclosure of highly confidential documents or information, the disclosure of which imposes a significant risk of competitive harm to the disclosing party. Parties may designate documents or information they consider to be of that nature as "Highly Confidential" and such documents or information will be disclosed only in accordance with the provisions of this Section.**
- 17 Parties must scrutinize carefully responsive documents and information and limit the amount 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 Nos. UG-040640, UE-040641, UE-031471 & UE-032043." 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 multipage 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 marked with the "Highly Confidential . . ." stamp and should be submitted on light blue paper.**
- 18 Parties other than Public Counsel and Staff who seek disclosure of highly confidential documents or information must designate one outside counsel and no more than one outside consultant, legal or otherwise, to receive and**

review materials marked "Highly Confidential..." In addition to executing the appropriate Agreement required by this Protective Order for "Confidential Information" each person designated as outside counsel or consultant for review of "Highly Confidential" documents or information must execute an affidavit, under oath, certifying that:

- a. They do not now, and will not for a period of five years, involve themselves in competitive decision making by 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.**
- b. They have read and understand, and agree to be bound by, the terms of the Protective Order in this proceeding and by this Amendment to the Protective Order.**

19 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 three days after service of the objection.

20 Designated outside counsel will maintain the highly confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel has access. No additional copies will be made. If another person is designated for review, that individual must not remove the highly confidential documents or information, or any notes reflecting their contents, from the secure location. Any testimony or exhibits prepared that reflect highly confidential information must be maintained in the secure location until 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. Appropriate procedures for including such documents or information will be determined by the presiding Administrative Law Judge following consultation with the parties.

21 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 Administrative Law Judge, or by the Commission.

- 22 **At the conclusion of this proceeding, and the exhaustion of any rights to appeal, designated outside counsel must return all highly confidential documents and information provided during the course of the proceeding, and must certify in writing that all notes taken and any records made regarding highly confidential documents and information have been destroyed by shredding or incineration.**
- 23 **Highly confidential documents and information will be provided to Staff and Public Counsel under the same terms and conditions of this Protective Order as govern the treatment of "Confidential Information" provided to Staff and Public Counsel and as otherwise provided by the terms of the Protective Order other than this Section.**

Use of Confidential Information in This Proceeding

- 24 **Reference to Confidential Information.** If reference is to be made to any Confidential Information by counsel or persons afforded access to this information during any part of this proceeding including, but not limited to, motions, briefs, arguments, direct testimony, cross-examination, rebuttal and proposed offers of proof, any public reference i.e., any reference that will not be placed in a sealed portion of the record) shall be either solely by title or by exhibit reference. Any other written reference shall be segregated and marked "Confidential Information," and access to it shall be given solely to persons who are authorized access to the information under this Order. References to the Confidential Information must be withheld from inspection by any person not bound by the terms of this Order.
- 25 In oral testimony, cross-examination or argument, public references to Confidential Information must be on such prior notice as is feasible to the affected party and the presiding officer. Unless alternative arrangements exist to protect the Confidential Information as provided below, there must be minimum sufficient notice to permit the presiding officer an opportunity to clear the hearing room of persons not bound by this Order or take such other action as is appropriate in the circumstances.
- 26 **Protected Use by Agreement.** Any party who intends to use any Confidential Information in the course of this proceeding, including but not limited to testimony to be filed by the party, exhibits, direct and cross-examination of witnesses, rebuttal testimony, or a proffer of evidence, shall give reasonable

notice of such intent to all parties and to the presiding officer, and attempt in good faith to reach an agreement to use the Confidential Information in a manner which will protect its trade secret, proprietary, or other confidential nature. The parties shall consider such methods as use of clearly edited versions of confidential documents, characterizations of data rather than disclosure of substantive data, and aggregations of data. The goal is to protect each party's rights with respect to Confidential Information while allowing all parties the latitude to present the evidence necessary to their respective cases.

- 27 If the parties cannot reach agreement about the use of Confidential Information, 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.
- 28 **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.
- 29 **Right to Challenge Confidentiality.** Any party may challenge another party's assertion of confidentiality with respect to any information asserted to be entitled to protection under this Order. The Presiding officer will conduct an *in camera* hearing to determine the confidentiality of information.

The burden of proof to show that such information is properly classified as confidential is on the party asserting confidentiality. Pending determination, the assertedly Confidential Information shall be treated in all respects as protected under the terms of this Order. If the presiding officer determines the challenged information is not entitled to protection under this Order, the information continues to be protected under this Order for ten days thereafter to enable the producing party to seek Commission or judicial review of the determination, including a stay of the decision's effect pending further review.

- 30 **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.
- 31 **Return of Confidential Information.** At the conclusion of this proceeding every person who possesses any Confidential Information (including personal notes that

make substantive reference to Confidential Information), must return all Confidential Information to the party that produced it, or must certify in writing that all copies and substantive references to Confidential Information in notes have been destroyed, within thirty days following the conclusion of this proceeding, including any administrative or judicial review. These provisions apply to all copies of exhibits which contain Confidential Information and for that reason were admitted under seal. The only exceptions are that exhibits may be preserved by counsel as counsel records, and a complete record, including Confidential Information, will be preserved by the Secretary of the Commission as part of the Agency's official records.

- 32 **Freedom of Information Laws.** Until the Commission or any court having jurisdiction finds that any particular Confidential Information is not of a trade secret, proprietary, or confidential nature, any federal agency that has access to and/or receives copies of the Confidential Information must treat the Confidential Information as within the exemption from disclosure provided in the Freedom of Information Act at 5 U.S.C. § 552 (b)(4); and any Washington state agency that has access to and/or receives copies of the Confidential Information must treat the Confidential Information as being within the exemption from disclosure provided in RCW 42.17.310(1)(h) and (q).
- 33 **Notice of Compelled Production In Other Jurisdictions.** If a signatory to this protective order is compelled to produce confidential documents in any regulatory or judicial proceeding by the body conducting the proceeding, the signatory must provide notice to the party that provided the confidential information. Such confidential information must not be produced for at least five days following notice, to permit the party that provided such information an opportunity to defend the confidential nature of the material before the regulatory or judicial body that would compel production. Disclosure after that date, in compliance with an order compelling production, is not a violation of this Order.
- 34 **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.
- 35 **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 divulgence 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 Olympia, Washington, and effective this ___ day of _____, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

EXHIBIT A (ATTORNEY AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET NOS. UG-040640, UE-040641, UE-031471 & UE-032043
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as attorney in this proceeding for _____ (a 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 Nos. UG-040640, UE-040641, UE-031471 & UE-032043, and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

Signature

Date

Address

EXHIBIT B (EXPERT AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET NOS. UG-040640, UE-040641, UE-031471 & UE-032043
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as expert witness,
consultant, or advisor 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
Nos. UG-040640, UE-040641, UE-031471 & UE-032043 and acknowledge that I have
reviewed the Protective Order and fully understand its terms and conditions.

Signature

Date

Employer

Permanent 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, consultant, or advisor 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, consultant, or advisor having access to Confidential Information. The objecting party shall file a motion setting forth the basis for objection and asking exclusion of the expert, consultant, or advisor from access to Confidential Information.

Signature

Date

EXHIBIT C (HIGHLY CONFIDENTIAL INFORMATION AGREEMENT)

AGREEMENT CONCERNING HIGHLY CONFIDENTIAL INFORMATION

IN DOCKET NOS. UG-040640, UE-040641, UE-031471 & UE-032043

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as

In-house attorney

In-house expert

Outside counsel

Outside expert

Small company employee or in-house expert

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 Nos. UG-040640, UE-040641, UE-031471 & UE-032043 and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

Signature

Date

Employer

Permanent 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 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 exclusion of the person from access to Highly Confidential Information.

Signature

Date