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June 21, 2005

VIA OVERNIGHT MAIL

Carole J. Washburn
Executive Secretary
Washington Utilities and
Transportation Commission
1300 S Evergreen Park Drive SW
Olympia, WA 98504-7250

**Re: Comments in Support of Puget Sound Energy, Inc.'s Motion For Amended Protective Order With Highly Confidential Provisions
Docket No. UE-050870**

Dear Ms. Washburn:

Zilkha Renewable Energy ("Zilkha") is a wind energy developer that participated in the recent competitive bidding process of Puget Sound Energy, Inc. ("PSE"). As part of PSE's recent Requests for Proposals ("RFPs"), Zilkha provided PSE with a bid proposal containing detailed, extensive information about the cost structure of its Wild Horse wind project and of its company, about its key supplier contracts and about wind data related to the Wild Horse wind project. Some of this information is highly proprietary and commercially sensitive.

Zilkha provided this information to PSE, pursuant to the Mutual Confidentiality Agreement. Under the Mutual Confidentiality Agreement, PSE agreed to seek a protective order from the Commission with "highly confidential" provisions to protect Zilkha against the disclosure of such confidential information to potential competitors.

As a developer of wind energy, Zilkha competes with other developers to sell wind generation projects or power from such projects. Disclosure of Zilkha's commercially sensitive information to our competitors or their consultants could make it possible for them to determine the cost structure of currently proposed and future Zilkha wind projects. This would put Zilkha at a distinct and unfair disadvantage in future competitive bidding situations.

The following information is particularly sensitive, and should be included in the category of "highly confidential" information, protected as proposed by PSE:

1. All Wild Horse project wind data and all analyses using such data, whether performed by consultants for Zilkha or by consultants for PSE.

2. Zilkha's Wild Horse direct project costs, or other internal or external indirect project costs, whether for development, construction, financing, operating or maintaining the project, and whether existing in the form of submissions to PSE or as PSE work product employing such information. Zilkha does not object to treatment of its final bid prices as merely "confidential," subject to the protective order.

3. All information concerning the terms of Zilkha's Turbine Supply Agreement and other Zilkha project agreements.

4. All proposals by Zilkha as to how specific milestone payments could be structured, as revealing the level of Zilkha's ability and willingness to internally finance projects.

Zilkha is concerned about the release to competitors or their current or future consultants of the specific components of Zilkha's RFP bid, even if it is subject to a confidentiality agreement. Knowledge of the details of a developer's initial and follow-up bid responses in one RFP can give a competitor a huge advantage in subsequent RFPs because the competitor will know the bidder's price point and commercial strategy. Because such information, once learned, cannot be "unlearned," it is reasonable for us to object to having our confidential bid proposals reviewed by consultants that work for our competitors, even under a confidentiality agreement.

Only ICNU appears to be affected by PSE's proposal. In addition, the amount of commercially sensitive material that Zilkha would seek to protect from competitors and their consultants is, at best, tangentially relevant to the current proceeding. The Commission, Commission staff, and Public Counsel—as well as any intervenors that are not our competitors or consultants to such competitors—would, subject to the protective order, have access to all materials involving Zilkha under PSE's proposal.

Disclosure of sensitive commercial information that reveals underlying cost structures can affect competitive bidding in Washington. One consequence of disclosing highly sensitive commercial data to competitors or their consultants may be to discourage participation in future RFPs in Washington. Another consequence will be to assure much greater resistance to supplying such "highly confidential" information to a public utility in future RFPs overseen by the Commission. The likely result will be fewer choices and increased costs for PSE and other regulated utilities, ultimately, their customers.

For these reasons, Zilkha supports PSE's request that the Commission issue a protective order with "highly confidential" provisions that permits PSE to designate information as "highly confidential" in its testimony, exhibits, responses to data requests, and briefing. Only the Commission, Commission staff and Public Counsel should have access to such "highly confidential" information. Any further release to experts for Commission staff or Public Counsel, or to any other parties who intervene in the June 7, 2005 PCORC Filing, should be subject to a showing that such persons or entities are not competitors or consultants to competitors of Zilkha. With respect to treatment of "highly confidential" material, Zilkha supports PSE's request for limitations on copying and handling of such materials by parties who are entitled to access such materials in order to reduce the risk of inadvertent disclosure.

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By applying these “highly confidential” provisions to the limited types of proprietary data specified above, the Commission can significantly reduce the risk of competitive harm to the owners and developers of wind power resources that participated in PSE’s recent competitive bidding process under Chapter 480-107 WAC.

Very truly yours,

A handwritten signature in black ink that reads "Christopher Taylor". The signature is written in a cursive style with a large initial "C".

Christopher Taylor
Director of Project Development- NW Region