



900 S.W. Fifth Avenue, Suite 2600  
Portland, Oregon 97204  
main 503.224.3380  
fax 503.220.2480  
www.stoel.com

June 22, 2005

STEPHEN C. HALL  
Direct (503) 294-9625  
schall@stoel.com

**VIA EMAIL AND HAND DELIVERY**

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:

I am submitting this letter on behalf of enXco. EnXco is a renewable 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"), enXco provided PSE with a bid proposal containing detailed, extensive information about the cost structure of its Desert Claim wind project and of its company, about its key supplier contracts and about wind data related to the Desert Claim Project. Some of this information is highly proprietary and commercially sensitive.

EnXco 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 enXco against the disclosure of such information to competitors or others.

As a developer of renewable energy, enXco competes with other developers to sell wind generation projects or power from such projects. Disclosure of enXco's commercially sensitive information to our competitors or their consultants would make it possible for them to determine the cost structure of existing enXco projects, as well as of future proposed projects. This would put enXco 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:

Oregon  
Washington  
California  
Utah  
Idaho



Carol Washburn  
June 22, 2005  
Page 2

1. All Desert Claim project wind data and all analyses using such data, whether performed by consultants for enXco or by consultants for PSE.
2. EnXco's Desert Claim 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. EnXco 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 enXco's Turbine Supply Agreement and other enXco project agreements.
4. All proposals by enXco as to how specific milestone payments could be structured, as revealing the level of enXco's ability and willingness to internally finance projects.

As noted above, disclosure of such "highly confidential" material to a competitor would substantially harm enXco in any future bid process. In addition, enXco is particularly concerned with respect to its Desert Claim project, because the project was not selected in the current RFP bid process by PSE, and enXco thus expects to bid the project again to PSE in an upcoming RFP, and/or to other investor-owned or public utilities. Knowledge of the Desert Claim cost, contract and wind data by enXco's competitors could afford them an enormous competitive advantage.

EnXco is concerned about the release to competitors or their current or future consultants of the above-specified specific components of enXco's RFP response, even if such release 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. 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 Industrial Customers of Northwest Utilities ("ICNU") appears to be affected by PSE's proposal. In addition, the amount of commercially sensitive material that enXco 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 enXco under PSE's proposal.



Carol Washburn  
June 22, 2005  
Page 3

Disclosure of such sensitive commercial information that reveals underlying cost structures can affect future 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 in future RFPs to investor-owned utilities overseen by the Commission. The likely result will be fewer choices and increased future costs for PSE and, ultimately, its ratepayers.

For these reasons, enXco 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 and will not be competitors or consultants to competitors of enXco. With respect to treatment of "highly confidential" material, enXco 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.

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

Very truly yours,

Stephen C. Hall  
Counsel for enXco

SCH:hhs

cc: Service List

## CERTIFICATE OF SERVICE

I certify that on June 22, 2005, I served by U.S. mail, postage prepaid, a copy of the foregoing document to the following counsel of record:

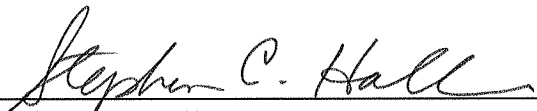
Robert D. Cedarbaum  
Assistant Attorney General  
1400 S Evergreen Park Drive SW  
PO Box 40128  
Olympia, WA 98504-0128

Karl R. Karzmar  
Puget Sound Energy, Inc.  
PO Box 97034  
Bellevue, WA 98009-9734

Kristin S. Dodge  
Jason Kuzma  
Perkins Coie LLP  
10885 NE Fourth Street, Suite 700  
Bellevue, WA 98004-5579

Simon J. ffitc  
Office of the Attorney General  
900 Fourth Avenue, Suite 2000  
Seattle, WA 98164

Bradley S. Van Cleve  
Davison Van Cleve PC  
1000 SW Broadway, Suite 2460  
Portland, OR 97204

  
\_\_\_\_\_  
Stephen C. Hall