

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION	)	DOCKET NO. UE-050870
	)	
Complainant,	)	
	)	ORDER NO. 03
v.	)	
	)	
PUGET SOUND ENERGY, INC.	)	PROTECTIVE ORDER
	)	
Respondent.	)	
	)	
.....	)	

1 The Commission finds, in response to a motion filed by PSE, discussion at prehearing among the parties and the presiding officer, and the Commission’s evaluation of the circumstances of this proceeding, that a protective order to govern disclosure of proprietary and confidential information is necessary in this proceeding. The Commission enters this order with the understanding that one or more parties may seek to amend the protective order to provide for the designation and treatment of “Highly Confidential” documents as provided in WAC 480-07-420 and -423. The Commission will carefully consider any arguments that may be presented for and against requests to modify the order. The Commission may also modify the order on its own motion, based on the needs of the parties and the proceeding, after opportunity for parties and interested persons to comment. The Commission finds as follows:

- a. It is likely that proprietary and confidential information will be required to resolve the issues in this proceeding;
- 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.

- c. The Commission finds that it is necessary to create a separate designation and a higher order of protection for certain 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, and it is based on a credible prima facie presentation that those documents present an exceptionally high degree of danger to the interests that are protected in RCW 80.04.095.
- d. The Commission finds that the short time available for completion of this docket and the consequent immediate need for parties to gain access to relevant information render the immediate entry of this order in the public interest, recognizing that parties may comment upon and propose changes when party status is granted.

2 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

- 3 **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 pre-filed testimony, exhibits, briefs, and all other documents filed with the Commission, and provide these "confidential deletions" in complete versions of the documents, 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.

- 4 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 No. UE-050870.**" 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 buff-colored paper with references to where Confidential Information is redacted in the original document.

- 5 **Confidential and Redacted Versions.** Parties must file **complete confidential and redacted versions of testimony, exhibits, and briefs with the Commission.** This includes electronic versions, and requires that **all diskettes and all electronic mail** specify whether the file is confidential, redacted, or public.

1. If a witness's testimony has a confidential portion, the sponsoring party must provide a complete redacted version of the testimony and a complete confidential version, with confidential pages on yellow or buff-colored paper.

2. Parties must submit (at least) two diskettes and E-mails one with the electronic version of the confidential text and one with the electronic version of the redacted text.
  - a. Parties 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. Parties 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 NO. UE-050870" prominently displayed on the first page (*i.e.*, the page that appears on the computer screen when the file is opened).
  
- 6 **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.

**B. Disclosure of Confidential Information**

- 7 **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.
- 8 **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.
- 9 **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 480-07-423. 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 neither distribute copies of Confidential Information to, nor 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.

**D. Use of Confidential Information in This Proceeding**

10 **Reference to Confidential Information.** If counsel or persons afforded access to Confidential Information refer to such information orally or in writing during any part of this proceeding, any public reference (*i.e.*, any reference that will not be placed in a sealed portion of the record) shall be solely by title, exhibit reference, or some other description that will not disclose the substantive Confidential Information contained in the document. 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.

11 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.

- 12 **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: (1) use of clearly edited versions of confidential documents, (2) characterizations of data rather than disclosure of substantive data, and (3) 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.
- 13 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.
- 14 **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.
- 15 **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.

- 16 The presiding officer may challenge a party's assertion of confidentiality by notice to all parties.
- 17 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.
- 18 **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, and must not be examined by any person except under conditions of this Order, 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.
- 19 **Return of Confidential Information.** Within thirty (30) days after the conclusion of this proceeding, including any administrative or judicial review, every person who possesses any Confidential Information (including personal notes that make substantive reference to Confidential Information and transcripts of any depositions to which a claim of confidentiality is made), must return all Confidential Information to the party that produced it, or at the producing party's election, must certify in writing that all copies and substantive references to Confidential Information in notes have been destroyed. These provisions apply to all copies of exhibits that 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.

- 20 **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 ten days following notice, to permit the party that provided the 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.
- 21 **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 to be heard.
- 22 **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, including, but not limited to, the provisions of RCW 80.04.380-.405

DATED at Olympia, Washington, and effective this 24th day of June, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

**EXHIBIT A (ATTORNEY AGREEMENT)**

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION  
IN DOCKET NO. UE-050870  
BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, \_\_\_\_\_, as attorney in  
this proceeding for \_\_\_\_\_ (party  
to this proceeding) agree to comply with and be bound by the Protective Order  
entered by the Washington Utilities and Transportation Commission in Docket  
No. UE-050870, 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 NO. UE-050870  
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 No. UE-050870 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 NO. UE-050870  
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 No. UE-050870 and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Permanent Address  
Responsibilities

\_\_\_\_\_  
Position and

\* \* \*

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