

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKET NO. UE-031725

STAFF RESPONSE TO PUBLIC
COUNSEL OBJECTION TO
ORDER NO. 3 AND PETITION
FOR INTERLOCUTORY
REVIEW

1 On November 24, 2003, Public Counsel filed objections to the Prehearing Conference Order No. 03, entered on November 12, 2003, and to certain provisions of the Protective Order No. 02, entered October 29, 2003. Public Counsel asks the Commission to exclude Public Counsel and Staff from the Highly Confidential affidavit requirements now contained in the Protective Order. The Prehearing Conference Order affirmed that those requirements were applicable to outside experts employed by Public Counsel and Staff.

2 Staff supports Public Counsel's request. We recognize that application of the affidavit requirements to Staff *in this case* does not impact Staff since it has not employed an outside expert. However, Public Counsel is an important statutory party

to this case and its ability to participate should not be impaired, as its pleading demonstrates it will be if the affidavit requirement is left intact.

3 Staff also notes that the Protective Order's general provisions already limit use of Confidential and Highly Confidential information to "purposes of this proceeding." Order No. 2 at ¶6. The affidavit requirements are unnecessary in light of that restriction.

4 Finally, in future cases Staff may employ outside experts that may find the affidavit language unacceptable. If Commission's Protective Order in this case has precedential impact, this affidavit requirement may impair Staff's involvement in those future cases in the same manner Public Counsel is impaired here.

5 If, however, the Commission rejects Public Counsel's request to exclude Public Counsel and Staff from an affidavit requirement, Staff suggests the following alternative language, which would replace ¶12a. of Order No. 02:

They 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 with the company or business organization producing the information.

6 Staff believes that this language is superior to the current affidavit since it focuses on the *use* of Highly Confidential information, while also protecting the

competitive interests of the Company and others providing Highly Confidential documents and information.

7 If the Commission maintains an affidavit requirement for Staff and Public Counsel in any form, Staff requests that the Commission clearly state that such language creates no precedent in later proceedings. Highly Confidential provisions have evolved over the years in an attempt to suit the purposes of a particular case.

8 Any affidavit requirement in this case should not prejudice a party's position in a future case.

Dated this 4th day of December, 2003.

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