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May 14, 2004

Via Email and Federal Express

Carole J. Washburn
Secretary
Washington Utilities and Transportation Commission
PO Box 47250
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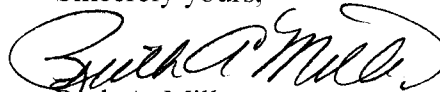
Re: In the matter of Washington Utilities and Transportation Commission v. Puget
Sound Energy, Inc.
Docket Nos. UE-040640; UE-040641

Dear Ms. Washburn:

Enclosed please find an original and thirteen (13) copies each of the Response of The Industrial Customers of Northwest Utilities in Opposition to Puget Sound Energy Inc.'s Motion and Supplemental Motion for Amended Standard Protective Order with "Highly Confidential" Provisions in the above-captioned matter.

Please return one file-stamped copy of the document in the postage-prepaid envelope provided. Thank you for your assistance.

Sincerely yours,


Ruth A. Miller

Enclosures

cc: Service List

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION	)	DOCKET NOS. UG-040640, UE-040641
)	
Complainant,	)	RESPONSE OF THE INDUSTRIAL
	)	CUSTOMERS OF NORTHWEST
v.	)	UTILITIES IN OPPOSITION TO PUGET
	)	SOUND ENERGY INC.'S MOTION AND
PUGET SOUND ENERGY, INC.	)	SUPPLEMENTAL MOTION FOR
	)	AMENDED STANDARD PROTECTIVE
Respondent.	)	ORDER WITH "HIGHLY
	)	CONFIDENTIAL" PROVISIONS
)	
_____)	
In the Matter of the Petition of	)	DOCKET NO. UE-031471
)	
PUGET SOUND ENERGY, INC.,)	
)	
For an Order Regarding the Accounting)	
Treatment For Certain Costs of the Company's)	
Power Cost Only Rate Filing)	
)	
_____)	
In the Matter of the Petition of	)	DOCKET NO. UE-032043
)	
PUGET SOUND ENERGY, INC.,)	
)	
For an Accounting Order Authorizing Deferral)	
and Recovery of Investment and Costs Related)	
to the White River Hydroelectric Project)	
)	
_____)	

INTRODUCTION

Pursuant to WAC § 480-07-375(4) and the Notice of Dates for Responses to Motion for Protective Order issued on May 6, 2004, in the above-referenced dockets, the Industrial Customers of Northwest Utilities ("ICNU") submits this Response ("Response") in

PAGE 1 – RESPONSE OF ICNU IN OPPOSITION TO PSE’S MOTION FOR AMENDED STANDARD PROTECTIVE ORDER

opposition to Puget Sound Energy's ("PSE" or the "Company") Motion for Amended Standard Protective Order with "Highly Confidential" Provisions ("Motion"), filed on May 4, 2004, and Supplemental Motion for Amended Standard Protective Order with "Highly Confidential" Provisions ("Supplemental Motion"), filed on May 13, 2004 (collectively, the "Motions").^{1/} ICNU does not object to PSE's request for entry of a protective order to govern the disclosure of confidential information in this docket. ICNU, however, opposes PSE's request for authority to designate information as "highly confidential." ICNU requests that the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") deny PSE's Motions and issue a standard protective order. A standard protective order was sufficient to protect PSE against disclosure of sensitive information in PSE's last general rate case, and the Company has not demonstrated that blanket authority to designate information as "highly confidential" is warranted at this point in this docket. In addition, PSE has not demonstrated that its limited need for a highly confidential designation outweighs both the potential burden that the proposed restrictions will impose on the parties and the public interest in disclosure of information.

If the Commission adopts an amended protective order that includes provisions governing "highly confidential" information, it should apply that designation to only the identities of the counterparties described in ¶¶ 4 and 5 of the Declaration of Julia M. Ryan in Support of PSE's Motion. WUTC v. PSE, WUTC Docket No. UE-040641 et al., Declaration of Julia M. Ryan in Support of PSE's Motion at 2 (May 3, 2004) ("Ryan Declaration"). This is the

^{1/} PSE filed a Motion for Amended Standard Protective Order on May 4, 2004. Following discussion with Staff and Public Counsel, on May 13, 2004, PSE submitted its Supplemental Motion for Amended Standard Protective, requesting approval of a protective order with revisions from the proposed order submitted on May 4, 2004. ICNU is submitting this Response in accordance with the Commission's original Notice of Dates for Response.

only specific information that PSE claims it currently needs to designate highly confidential.^{2/}

Id. Thus, if the Commission grants PSE's request, it should limit the highly confidential designation to only that information.

In the alternative, if the Commission adopts a protective order that grants PSE authority to apply a highly confidential designation on a prospective basis, the Commission should include the following restrictions in that order:

1. Staff of the designated attorneys and experts should have access to the highly confidential information as necessary to process the case;
2. Designated outside counsel may provide a copy of any highly confidential documents or information related to a subject matter area to an outside consultant who has been designated to receive highly confidential information related to that subject matter area. The designated outside consultant must keep those copies in a secure location; and
3. Return of highly confidential information should be upon written request of the Company.

Attached as Exhibit A are specific edits to ¶ 14 of the proposed protective order to implement ICNU's suggestions. These proposed restrictions are intended to prevent disclosure of highly confidential information to persons who have not been designated to receive such information, while still preserving the ability of the parties to effectively participate in the case.

^{2/} PSE also argues that it must protect information about its portfolio management strategies, details regarding energy market transactions and hedging, and individual generating units; however, PSE has provided that type of information in past rate cases under the terms of the standard protective order. See e.g., WUTC v. PSE, WUTC Docket No. UE-011570, UG-011571, Workpapers of William A. Gaines (Nov. 29, 2001); PSE Response to Staff Data Requests 201I, 401G, 402G, 403G, 413G.

ARGUMENT

PSE has not justified the need for authority to designate information as highly confidential. PSE has identified only one specific piece of information that it needs to designate as highly confidential. Ryan Declaration at 2, ¶ 4-5. Regardless of whether this information requires the level of protection that PSE seeks, it does not justify granting blanket authority to apply a highly confidential designation that would impose severe burdens on the parties. As described below, the burden imposed on the parties with respect to receipt of highly confidential information far outweighs PSE's interest in protecting against disclosure of this one particular piece of information.

The protective order proposed by PSE is similar to the Protective Order with "Highly Confidential" Provisions issued by the Commission in the recent PSE Power Cost Only Rate ("PCOR") Review in Docket No. UE-031725. WUTC v. PSE, WUTC Docket No. UE-031725, Order No. 02, Protective Order with Highly Confidential Provisions (Oct. 29, 2003) ("UE-031725 Protective Order"). In that docket, PSE designated voluminous amounts of materials as highly confidential, and the restrictions on that information created a severe hardship for ICNU, which, in part, provided the basis for a Commission order granting a continuance of the schedule. See WUTC Docket No. UE-031725, Order No. 06, Granting, in Part, Motion for Continuance (Dec. 19, 2003). The Commission should not authorize a highly confidential designation at this point in the proceeding and create the potential for similar hardships when PSE has not demonstrated a need to prospectively designate materials as highly confidential. Less burdensome means of addressing PSE's concerns are available.

In addition, the protective order currently proposed by PSE is unacceptable because it does not allow staff of designated counsel and experts to handle highly confidential information for the purposes of processing the case, as it permits only designated counsel to retain highly confidential documents. These restrictions are unnecessary and will unreasonably impair ICNU's review of the issues in this proceeding.

A. PSE Has Not Demonstrated that Blanket Authority to Designate Information as Highly Confidential is Necessary

PSE requests authority for a highly confidential designation in this proceeding based on the fact that it currently is concerned about disclosure of the identities of certain counterparties that are willing to extend PSE credit and information provided by those entities. Ryan Declaration at 2, ¶ 4-5. The presence of one piece of information in this proceeding that PSE considers highly confidential does not justify granting blanket authority for such a designation, especially when the potential burden associated with receipt and handling of other information that may be unjustifiably designated as highly confidential is so onerous. It also creates the added burden of requiring other parties to challenge the highly confidential designation.

PSE was granted authority to apply the highly confidential designation in the recent PCOR proceeding and the Company applied that designation to huge volumes of information, including the entire data set to the Company's AURORA power cost model. ICNU received 29 responses to data requests in UE-031725 that included highly confidential information and 8 CD-ROMs that were designated highly confidential. This unreasonable amount of highly confidential information caused both ICNU's counsel and consultant hardship.

In fact, review of PSE's filing in UE-031725 was delayed by the restrictions on disclosure of highly confidential information and that delay played a role in ICNU and Microsoft Corporation ("the Joint Parties") requesting a continuance of the schedule in that docket. WUTC Docket No. UE-031725, Joint Motion for Continuance of ICNU and Microsoft at 6-8 (Dec. 11, 2003). Both Staff and Public Counsel submitted written responses supporting the request, with Staff specifically noting the Joint Parties' difficulties with receipt of highly confidential information. WUTC Docket No. UE-031725, Public Counsel Response to Joint Motion for Continuance (Dec. 18, 2003); WUTC Docket No. UE-031725, Staff Response Supporting Joint Motion for Continuance at 2 (Dec. 18, 2003). In response to the Joint Parties' motion, the Commission granted a three-week continuance of the schedule. WUTC Docket No. UE-031725, Order No. 06, Granting, In Part, Motion for Continuance (Dec. 19, 2003).

In this case, granting PSE blanket authority to apply the highly confidential designation could result in even greater hardship than experienced in the PCOR proceeding, because this is a general rate case with many more potential issues. Although ICNU acknowledges that the proposed protective order allows a party to challenge the designation of information as highly confidential, the Commission should not place that burden on the parties at this point in the proceeding, because PSE asserts that it needs to apply the highly confidential designation to only a few documents. Blanket authority to designate materials highly confidential is unnecessary in this situation. If PSE needs to designate additional information in this Docket as highly confidential in the future, the Company should have the burden to come forward and justify the request at that time. Limiting the amount of information that PSE can designate as highly confidential is consistent with the public interest and Washington public

PAGE 6 – RESPONSE OF ICNU IN OPPOSITION TO PSE'S MOTION FOR AMENDED STANDARD PROTECTIVE ORDER

records law, both of which promote disclosure. *See* RCW § 42.17.250 et seq. Indeed, if a public records request is made for a confidential document in the Commission's records, that document will be disclosed unless a superior court preventing disclosure order can be obtained within 10 days. RCW § 80.04.095. Under these circumstances, the Commission should issue a protective order that designates as highly confidential the specific information described in ¶ 4 of the Ryan Declaration and allows the Company to seek additional protection for other materials if necessary in the future. Such an order will provide PSE the protection it seeks while eliminating the potential for other parties to be unnecessarily burdened.

B. Both Counsel and Consultants for a Party Should Be Allowed to Keep Highly Confidential Information

If the Commission issues a protective order granting PSE prospective authority to designate materials as highly confidential, it should include provisions in that order that will relieve some of the administrative burden associated with the receipt and handling of those materials. One of the primary difficulties with the protective order proposed by PSE is the requirement that only designated outside counsel be able to keep highly confidential information, and any other designated person must view the information only in the location chosen by counsel:

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, EXCEPT FOR USE DURING HEARING AND THEN SUCH COPIES SHALL ALSO BE SUBJECT TO THE PROVISIONS OF THIS ORDER. 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. . . .

Supplemental Motion, Exhibit A at ¶14 (emphasis added). These restrictions are unreasonable and unnecessary. The proposed protective order otherwise authorizes one designated outside consultant to review highly confidential information for each issue; however, each of those consultants may only review that information in one location. PSE's filing in this case presents numerous issues to analyze, and ICNU expects to retain more than one consultant to review the filing. Some of these consultants may be located outside the state or the region. Requiring all ICNU consultants to travel to the offices of ICNU's counsel to view highly confidential information is unduly burdensome, expensive, and unnecessary. In addition, much of the analysis performed by experts involves computer modeling with specialized software and hardware maintained by the experts rather than ICNU's counsel. The fact that some of these consultants may not be located near counsel for ICNU only increases the burden.

Furthermore, despite the fact that the UE-031725 Protective Order also contained the restriction on keeping all highly confidential in one location, PSE did not follow this requirement in that docket. PSE sent copies of highly confidential materials to both outside counsel and consultants for ICNU at their respective offices. Providing both counsel and consultants for parties with highly confidential materials at their respective offices worked in UE-031725, and the Commission should adopt provisions that allow the same access here.

C. Staff for Counsel and Consultants Should be Permitted to Handle Highly Confidential Information for the Purposes of Processing the Case

The extra protection proposed by PSE also is unacceptable, because it does not allow for staff of a party's counsel or consultant to receive and handle highly confidential information in order to process the case. With such restrictions in place, designated counsel for a

party would be required to organize all discovery responses that include highly confidential information and handle and process all highly confidential information for the purposes of preparing prefiled testimony, hearing exhibits, and briefs.^{3/} Such restrictions are unreasonable and impractical for all parties who intend to participate in a meaningful manner. PSE has not demonstrated that it will suffer harm if staff for counsel and consultants are allowed to handle highly confidential information. As such, if the Commission issues a protective order with blanket authority to designate information as highly confidential, the order should include provisions allowing staff of designated counsel and consultants to handle highly confidential information for the purposes of processing the case.

CONCLUSION

ICNU does not oppose PSE's request for entry of a standard protective order to govern the disclosure of confidential information in this proceeding. ICNU does, however, oppose PSE's request for authority to designate information as highly confidential on a prospective basis. PSE alleges only a limited need for such authority at this point in this Docket and this need does not justify the potential burden of such an order on the parties. As such, ICNU requests that the Commission deny PSE's Motions and issue a standard protective order.

If the Commission adopts an amended protective order with highly confidential provisions, it should apply that designation to only the information identified in ¶ 4 of the Ryan

^{3/} ICNU sought and received permission for administrative staff to file and organize highly confidential documents and materials for purposes of organizing discovery and preparing testimony, exhibits, and briefs in the PCOR proceeding.

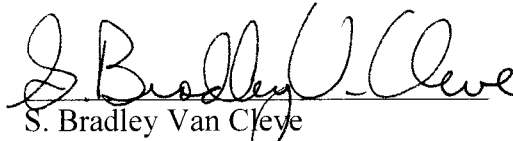
Declaration and allow PSE to request additional protection for other information if necessary in the future.

Finally, if the Commission issues a protective order granting PSE authority to apply a highly confidential designation on a prospective basis, that order should provide that:

a) staff of the designated attorneys and experts should have access to the highly confidential information as necessary to process the case; b) designated outside counsel may provide a copy of any highly confidential documents or information related to a subject matter area to an outside consultant who has been designated to receive highly confidential information related to that subject matter area, and the designated outside consultants must keep those copies in a secure location; and c) highly confidential information would need to be returned only upon written request of the Company. These restrictions will afford PSE protection against disclosure of highly confidential information, while not imposing unreasonable restrictions on the parties' review of such information.

DATED this 14th day of May, 2004.

Respectfully Submitted,



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Of Attorneys for the Industrial Customers
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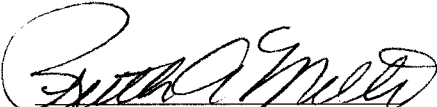
PAGE 10 – RESPONSE OF ICNU IN OPPOSITION TO PSE’S MOTION FOR AMENDED
STANDARD PROTECTIVE ORDER

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Response of The Industrial Customers of Northwest Utilities in Opposition to Puget Sound Energy Inc.'s Motion and Supplemental Motion for Amended Standard Protective Order with "Highly Confidential" Provisions upon all parties of record in this proceeding, by mailing a copy thereof in a sealed, first-class postage prepaid envelope to each individual's last-known address, as listed below.

DATED this 14th day of May, 2004.

Davison Van Cleve, P.C.

By: 
Ruth A. Miller

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Exhibit A

- 14 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, EXCEPT FOR USE DURING HEARING AND THEN SUCH COPIES SHALL ALSO BE SUBJECT TO THE PROVISIONS OF THIS ORDER. Notwithstanding the above, designated outside counsel may provide a copy of any Highly Confidential documents or information related to a subject matter area to an outside consultant who has been designated to receive Highly Confidential Information related to that subject matter area. Staff of designated outside counsel and Staff of outside consultants who are authorized to review Highly Confidential information shall have access to Highly Confidential information for purposes of processing the case, including, but not limited to, receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits, and briefs.~~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 include or reflect Highly Confidential Information must be maintained in the secure location until filed with the Commission or 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. The presiding officer will determine the process for including such documents or information following consultation with the parties.
- 15 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 officer(s). The party contending that a document or information is Highly Confidential bears the burden of proving that such designation is necessary.
- 16 At the conclusion of this proceeding, and the exhaustion of any rights to appeal, designated outside counsel, upon written request by the Company, 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.