

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-161123

MICROSOFT CORPORATION'S
OBJECTION TO, AND MOTION TO
DENY, ACCESS TO CONFIDENTIAL
INFORMATION BY NORTHWEST
ENERGY COALITION'S WITNESSES
O'BRIEN AND KELLEY

I. INTRODUCTION

1. Pursuant to RCW 34.05.437, WAC 480-07-375 and Order 03,¹ Microsoft Corporation ("Microsoft") objects to Northwest Energy Coalition's ("NWEC") designation of Michael H. O'Brien and Dina Dubson Kelley, both of whom are employed by Renewable Northwest, as expert witnesses who would have access to confidential information in this proceeding.² Renewable Northwest employees should be denied access to confidential information for the same reasons this Commission denied representatives and members of the Northwest and Intermountain Power Producers Coalition ("NIPPC") access to confidential information in this proceeding.³

¹ Protective Order With "Highly Confidential" Provisions (Nov. 22, 2016).

² Attached as **Exhibit A** is Microsoft's signed objections to the Expert Agreements of Mr. O'Brien and Ms. Kelley.

³ Order 05, Order Accepting Interlocutory Review of Order 04 and Granting Intervention of the Northwest and Intermountain Power Producers Coalition with Conditions (Jan. 3, 2017).

II. RELIEF REQUESTED

2. Microsoft respectfully requests that the Commission issue an order denying Mr. O'Brien and Ms. Kelley access to confidential information produced in this proceeding.

III. BACKGROUND

3. On February 15, 2017, NWEA filed and served Expert Agreements for Renewable Northwest's Mr. O'Brien and Ms. Kelley for access to confidential information in this proceeding. Microsoft understands that Mr. O'Brien is Renewable Northwest's Senior Policy Analyst and Ms. Kelley is Renewable Northwest's Chief Counsel.⁴

4. Like NIPPC, Renewable Northwest is an association whose members include nonregulated independent power producers that participate in competitive energy markets.⁵

5. On January 3, 2017, the Commission entered Order 05 granting NIPPC's request to intervene in this proceeding with conditions.

6. In Order 05, the Commission precluded NIPPC, its representatives and members "from accessing any confidential information produced in this docket, including confidential information contained in filings with the Commission, produced through discovery, or provided in oral testimony."⁶ It did so because of "concerns that NIPPC's ability to access [PSE's and Microsoft's] confidential information, even under the auspices of the protective order, threatens

⁴ See Renewable Northwest Staff at <http://www.rnp.org/staff> (last visited Feb. 24, 2017).

⁵ Compare Renewable Northwest's membership (http://www.rnp.org/our_members (last visited February 23, 2017)) with NIPPC's membership (<http://nippc.org/about/members/> (last visited February 23, 2017)).

⁶ Order 05 ¶ 20.

competitive harm that weighs against granting intervention.”⁷ The limitation on NIPPC in Order 05 “addresses the competitive harm PSE and Microsoft fear” would otherwise result.⁸

7. With regard to NIPPC’s access to confidential information, the Commission stated in Order 05: “[W]e see little or no benefit from NIPPC’s view of the level of PSE’s stranded costs or Microsoft’s load, particularly when those issues involve consideration of competitively sensitive data.”⁹

IV. ARGUMENT

8. Renewable Northwest’s membership consists of the same types of companies—indeed, some of the exact same companies, e.g., EDP Renewables and Invenergy—that make up NIPPC’s membership.¹⁰ RNP’s mission is to “expand” renewable energy resources in the Pacific Northwest.¹¹ Thus RNP has an institutional interest in the markets for power in Washington. Doubtless several of its members would be interested in selling power to Microsoft and in knowing more about Microsoft’s loads and costs.

9. The Commission has already recognized the competitive harm that could result if Microsoft’s confidential information were obtained by power suppliers and their representatives. As in Order 05, these competitive harms weigh against allowing Renewable Northwest’s employees to access confidential information in this proceeding.

⁷ See Order 05 ¶ 18.

⁸ See Order 05 ¶ 20.

⁹ Order 05 ¶ 19.

¹⁰ See *supra* note 5.

¹¹ See Renewable Northwest Our Story at <http://www.rnp.org/node/our-story> (last visited Feb. 24, 2017).

10. Consistent with Order 05, the Commission should prohibit Mr. O'Brien and Ms. Kelley from accessing confidential information produced in this proceeding.

V. CONCLUSION

11. For the reasons stated above, Microsoft requests that Mr. O'Brien and Ms. Kelley be denied access to confidential information in this proceeding.

Respectfully submitted this 27th day of February, 2017.

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