

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

Docket UG-230393

**PUGET SOUND ENERGY'S
RESPONSE TO PUBLIC RECORDS
ACT REQUEST**

I. INTRODUCTION

1. Pursuant to WAC 480-04-095(5)(c)(ii)(B), Puget Sound Energy ("PSE") submits this response to the Washington Utilities and Transportation Commission's ("Commission") March 8, 2024, Notice Reopening Record for a Limited Purpose and Notice of Opportunity to Respond to Public Records Act Request ("Notice").
2. On March 7, 2024, the Commission received a Public Records Act request ("Public Records Act Request") for information submitted to Staff as confidential records in this pending adjudication.
3. PSE requests the Commission keep Confidential all information designated Confidential in this proceeding. Information marked Confidential in this proceeding relates to either confidential contractual terms or other data that could put PSE at a commercial disadvantage were it to be released. No party in this proceeding has challenged PSE's confidentiality

designations. The information relevant to the Public Records Act Request is available in the nonconfidential versions of the responsive documents. Accordingly, the relevant information could be made available in a manner that provides all responsive documents requested in the Public Records Act Request, without releasing any information designated as Confidential.¹

II. BACKGROUND

4. On July 3, 2023, administrative law judge Doyle entered a protective order in this case (“Protective Order”) governing the documents filed and otherwise shared over the course of this proceeding. The Protective Order prohibits the disclosure of information designated “Confidential” by the parties. Only parties that agree to be subject to the Protective Order are authorized to access Confidential information. No party has challenged the Confidentiality designation of any of the information provided by PSE in this proceeding. The proceeding has not concluded and while the record is closed, the parties are still awaiting a final determination on the merits.

5. The Commission’s Records Center received the March 7, 2024, Public Records Act Request which seeks the documents and data related to Commission Staff analyst Betty Erdahl’s testimony “in November 2023 that they discovered ‘multiple’ occasions when the plant handled more than the daily 250,000 gallons of gas allowed under its permit from the Puget Sound Clean Air Agency.” Witness Erdahl did not explicitly address this issue during cross-examination at the November hearing, but this information was mentioned in the September 8, 2023 Prefiled

¹ PSE has not been made aware of the scope of documents Commission staff has identified as responsive, if any. If Commission staff determined additional information is relevant other than that identified by PSE in this response, PSE maintains any information marked confidential should remain confidential, and requests an opportunity to respond with specificity before the documents containing that information might be released.

Testimony of Betty A. Erdahl, Exh. BAE-1CT on pages 28-32. Although it is unclear from the Public Records Act Request, PSE presumes this Prefiled Testimony by witness Erdahl is the relevant information the requestor is referring to.

6. Exh. BAE-1CT contains information marked Confidential on pages 18 and 30. None of the information marked Confidential is relevant to, nor related to witness Erdahl's assertions regarding the PSCAA permit limitations. The Confidential information on pages 18 and 30 is related to commercially sensitive contractual provisions involving a nonparty, and is unrelated to the information PSE believes is referred to in the Public Records Act Request.
7. The data supporting witness Erdahl's testimony on pages 28-32 includes nonconfidential data request responses that were all provided as exhibits in support of the Erdahl testimony. Specifically, Erdahl, Exh. BAE-7, Erdahl, Exh. BAE-9, Erdahl, Exh. BAE-10, and Erdahl, Exh. BAE-12 all provide information that supports the testimony on pages 28-32 of Erdahl, Exh. BAE-1CT; Erdahl, Exh. BAE-12 provides the underlying daily production data for PSE's Tacoma LNG plant.

III. RESPONSE AND RELEVANT RECORDS

8. PSE objects to the release of the Confidential information in Exh. BAE-1CT because the information contains commercially sensitive terms in a contract with an entity that is not a party to this proceeding. This Confidential information remains relevant to issues currently under consideration in this adjudication and remains Confidential. Furthermore, this Confidential information is not relevant to, nor responsive to the issues identified in the Public Records Act Request. The Commission should not expand the scope of the request by releasing Confidential information that is not responsive to the Public Records Act Request.

9. The Protective Order governs the use of protected Confidential information during this proceeding and requires all parties to follow the specific guidance in the Protective Order for the handling and use of Confidential information. Release of Confidential information to a nonparty would be contrary to the requirements of the Protective Order.² Additionally, RCW 80.04.095 specifically authorizes the Commission to use “protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings.” The Protective Order and RCW 80.04.095 allow parties to freely exchange information during a contested proceeding to parties that otherwise “would not be authorized to access that information in the absence of a protective order.”³ The Protective Order for this proceeding is still in effect, the parties are subject to the terms of the Protective Order, no party has challenged any Confidential designations, the proceeding is ongoing as no final decision has been entered, and information subject to the Protective Order should be protected consistent with its terms.

10. PSE does not object to the release of nonconfidential information that is responsive to the Public Records Act Request to the extent that information is already publicly available. As PSE explained above, the specific information relevant to and otherwise responsive to the Public Records Act Request filed in this proceeding is not marked Confidential. The relevant records could include witness Erdahl’s redacted Exh. BAE-1CT, Erdahl, Exh. BAE-7, Erdahl, Exh. BAE-9, Erdahl, Exh. BAE-10, and Erdahl, Exh. BAE-12. PSE does not object to making the nonconfidential versions of these documents available for inspection and copying. Indeed, they are already available on the Commission’s website.

² See Protective Order at ¶¶ 6-10.

³ *Id.* at ¶ 1.

11. If Commission Staff or any other party to this proceeding believe any other documents that are marked Confidential would be responsive to the Public Records Act Request, PSE reserves its rights to respond to the information so identified.

IV. CONCLUSION

12. The release of the publicly available documents is sufficient to respond to the Public Records Act Request and the Commission should not release documents beyond those that are directly responsive, particularly considering the adjudication has not concluded.

RESPECTFULLY SUBMITTED this 18th day of March, 2024.

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