

**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 PETITION FOR
INTERLOCUTORY REVIEW OF
ORDER 06**

I. INTRODUCTION

1. Pursuant to WAC 480-07-810(3)(b) and the Washington Utilities and Transportation Commission's ("Commission") April 19, 2024, Notice of Opportunity to Respond to Petition for Interlocutory Review of Order 06 ("Notice"), Puget Sound Energy ("PSE") submits this response to the Petition for Interlocutory Review of Order 06 ("Petition").

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. On March 26, 2024, the Commission entered Order 06, Denying Public Records Act Request for Confidential Information ("Order 06"). The original requestor ("Requestor") filed the Petition but did not serve the parties.

3. PSE requests the Commission deny review and otherwise reject the Petition so that all information designated Confidential in this proceeding remain Confidential. The Petition does not meet the standard for interlocutory review in WAC 480-07-810, and review should be denied on that basis. The information marked Confidential in this proceeding, although not relevant to the information sought in the Public Records Act Request, 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. Consistent with Order 06, relevant information could be made available in a manner that provides the 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 and only parties that agree to be subject to the Protective Order are authorized to access Confidential information. No party has challenged the Confidential designation of any of the information provided by PSE in this proceeding.

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

¹ Order 06 ¶ 12.

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.” On March 8, 2024, Administrative Law Judge Howard issued a notice of opportunity to respond to the request.

6. In response to the Public Records Act Request, PSE noted none of the information marked Confidential is relevant to, nor related to, witness Erdahl’s assertions regarding the Puget Sound Clean Air Agency (“PSCAA”) permit limitations. Although PSE identified Exh. BAE-1CT as having publicly available information related to the concerns expressed in the Public Records Act Request, it also contains information marked Confidential on pages 18 and 30. The Confidential information on pages 18 and 30 is related to commercially sensitive contractual provisions involving a nonparty, was properly marked Confidential, and is unrelated to the information requested in the Public Records Act Request. Information that is relevant to the Public Records Act Request can be found in Erdahl, Exh. BAE-7; Erdahl, Exh. BAE-9; Erdahl, Exh. BAE-10; and Erdahl, Exh. BAE-12, which provides the underlying daily production data for PSE’s Tacoma LNG plant.

7. On March 26, 2024, the Commission entered Order 06 denying the Public Records Act Request. Order 06 specifically authorized the release of the publicly-available versions of the relevant materials. Despite the information relevant to the Public Records Act Request being publicly available in the nonconfidential versions of witness Erdahl’s exhibits, the Requestor nevertheless filed the Petition. The Petition provides no legal basis as to why the Commission should overturn Order 06, an interlocutory order subject to WAC 480-07-810.

III. ARGUMENT

8. WAC 480-07-810(2) governs the Petition which requests the Commission review Order 06, an interlocutory order. Review is available if (1) the interlocutory order terminates a party's participation, and it causes substantial and irreparable harm; (2) immediate review is necessary to prevent substantial prejudice; or (3) immediate review saves the Commission and the parties substantial effort or expense. Notably, the Petition makes no argument as to why review of interlocutory Order 06 is necessary, nor does the Petition identify how the Requestor is prejudiced, nor can it, since the Order 06 authorizes release of the (nonconfidential) documents containing the information requested. The Petition is unnecessary, does not meet the legal standard, and review should be denied.
9. The Requestor identifies no legal rationale in the Petition that would warrant Commission review of Order 06 and articulates no basis for finding the Requestor is prejudiced by Order 06. Specifically, Order 06 authorizes the release of "the redacted, publicly-available versions of these materials in response to the PRA request."² As explained above, the information identified in the Public Records Request is already publicly available. Accordingly, the Requestor is not prejudiced by the Order, because the responsive information will be provided. In contrast, Order 06 protects information that is unrelated to Commission Staff analyst Betty Erdahl's testimony that "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

² Order 06 ¶ 12.

Agency.” The Petition does not demonstrate a basis for granting review under WAC 480-07-810 and it should be denied.

10. Should the Commission decide to consider the Petition on the merits, the Confidential information in Exh. BAE-1CT should be protected because the information contains commercially sensitive terms in a contract with an entity that is not a party to this proceeding.³ 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.⁴ Additionally, RCW 80.04.095 specifically authorizes the Commission to use protective orders to govern “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 with parties that otherwise “would not be authorized to access that information in the absence of a protective order.”⁵ Order 06 is an interlocutory determination, made before the final order in this case, that properly protected information subject to the Protective Order. The Petition identifies no clearly erroneous determination in Order 06, but should the Commission grant review, it should affirm Order 06.

³ Order 06 ¶ 10.

⁴ See Protective Order at ¶¶ 6-10.

⁵ *Id.* at ¶ 1.

IV. CONCLUSION

11. The Commission should deny review of Order 06 because the Petition identifies no basis for review under WAC 480-07-810 and Order 06 properly protected documents subject to the Protective Order in the proceeding. Moreover, all information requested in the Petition is publicly available.

RESPECTFULLY SUBMITTED this 29th day of April, 2024.

PERKINS COIE LLP

By s/ Byron C. Starkey
Sheree Strom Carson, WSBA #25349
Pamela J. Anderson, WSBA #37272
Byron C. Starkey, WSBA #55545
Attorneys for Puget Sound Energy