

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

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| WASHINGTON UTILITIES AND |) | DOCKET NO. UT-050606 |
| TRANSPORTATION COMMISSION, |) | |
| |) | ORDER NO. 04 |
| Complainant, |) | |
| |) | |
| v. |) | ORDER GRANTING MOTION |
| |) | TO EXCLUDE CERTAIN |
| INLAND TELEPHONE COMPANY, |) | EXPERTS FROM ACCESS TO |
| |) | CONFIDENTIAL |
| Respondent. |) | INFORMATION |
| |) | |
| |) | |

- 1 **NATURE OF PROCEEDING.** Docket No. UT-050606 involves the suspension of a tariff filed by Inland Telephone Company (Inland) on April 19, 2005. The tariff provided for the removal from Inland’s service area the territory at the southern edge of the Roslyn exchange comprised of the Suncadia Resort and the addition of other territory north of the Roslyn exchange. On June 29, 2005, the Commission suspended the proposed tariff revisions.
- 2 **APPEARANCES.** Richard A. Finnigan, attorney, Olympia, represents Inland. Robert Cromwell, Assistant Attorney General, Seattle, WA, represents the Public Counsel Section of the Washington Office of the Attorney General. Chris Swanson, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”). John L. West and Richard M. Peterson, attorneys, Seattle, represent Suncadia LLC (Suncadia). Gregory J. Kopta, attorney, Seattle, represents Intelligent Community Services (ICS).

- 3 **PROTECTIVE ORDER.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington on August 11, 2005, before Administrative Law Judge Theodora M. Mace. During the prehearing conference, the parties requested that the Commission enter a protective order in this proceeding to govern disclosure of proprietary and confidential information. The Commission entered Order No. 03, Protective Order, on August 17, 2005.
- 4 By terms of the Protective Order, Confidential Information is made available only to “Commissioners, Commission Staff, the presiding officer(s), and counsel for the parties.”¹ In addition, access to Confidential Information may be authorized for persons designated by the parties as their experts.² Except for Commission Staff, no expert may be “an officer, director, direct employee, major shareholder, or principal of any party or any competitor of any party (unless this restriction is waived by the party asserting confidentiality).³ Disputes about who is entitled to access to Confidential Information must be brought to the presiding officer.⁴
- 5 **MOTION TO EXCLUDE.** On September 6, 2005, Suncadia filed a motion to exclude from access to Confidential Information three individuals, including Mr. Gregory A. Maras, Mr. James K. Brooks and Mr. John P. Coonan, because each of these individuals had been identified as employees of Inland and because Suncadia had not granted a waiver of the Protective Order’s provision excluding employees of a party from access to Confidential Information.

¹ Order No. 03, Protective Order, ¶ 8.

² Id.

³ Id.

⁴ Id.

6 In Inland's response to the Motion, the company argues that the three individuals, although employees of Inland, need access to Confidential Information in order to assist Inland in preparing testimony due to be filed in October 2005. Inland contends that Mr. Maras is an expert in provisioning telecommunications services and Mr. Brooks is an expert in financial matters related to telecommunications. As experts, both would assist Mr. Coonan in preparing his testimony as the witness on Inland's behalf. Inland further asserts that it has not asked that every employee have access to such information—only those who are needed to assist in preparing testimony.

7 **DISCUSSION AND DECISION.** Inland's arguments in opposition to the motion are not persuasive. The purpose of a Protective Order is to promote and encourage parties to provide reliable information that the Commission may use to resolve disputes. The terms of the Protective Order are designed to avoid dissemination of information that would assist the Commission, but, if made known to a party's competitors, would cause the party harm. Therefore, the standard Protective Order specifically excludes the officers, shareholders and employees of parties to the proceeding from access to commercially sensitive information, unless the party affected provides a waiver for those individuals.

8 In its response to the motion, Inland fails to provide a sufficient reason for disregarding the waiver provision of the Protective Order. Inland's claim that its employees are "experts" appears to be an effort to circumvent the provisions and purposes of the Protective Order. The Protective Order contemplates the use of outside "experts," rather than employee "experts" so as to avoid the danger of improper dissemination of Confidential Information. Inland's employees may be experts in their individual jobs, as, are all employees. This does not qualify them as "experts" as that term is used in the Protective Order. Nothing in the Protective Order forecloses Inland's use of properly qualified experts, who may have access to Confidential Information under the Protective Order, in preparing testimony in this case.

9 In order for the Commission to obtain the type of commercially sensitive information essential to a resolution of a case such as this, the appropriate and reasonable course of action is to grant the motion to exclude Inland's employees from access to Confidential Information absent a waiver from Suncadia.

ORDER

10 THE COMMISSION ORDERS That Suncadia's Motion to Exclude Certain Experts From Access to Confidential Information is granted.

11 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 20th day of September, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge