

2 **PARTIES:** Melinda Davison, Davison Van Cleve, P.C., Portland, Oregon, represents Air Liquide America Corporation, Air Products and Chemicals, Inc., The Boeing Company, CNC Containers, Equilon Enterprises, LLC, Georgia-Pacific West, Inc., and Tesoro Northwest Company. Stan Berman, Heller Ehrman White & McAuliffe, LLP, Seattle, Washington, and James M. Van Nostrand, Stoel Rives, Seattle, Washington, represent Puget Sound Energy, Inc. (PSE). Jim Pemberton appeared *pro se* to represent the interests of the City of Anacortes and its water utility. John A. Cameron and Traci Grundon, Davis Wright Tremaine LLP, Portland, Oregon, represent Bellingham Cold Storage Company (BCS). Public Utility District No. 1 of Whatcom County (Whatcom PUD), by prior arrangement, did not appear at prehearing and will designate its legal counsel or permanent representative later; Whatcom PUD did appear via its written Petition To Intervene, signed by Tom Anderson, *pro se*. Frank Prochaska appeared *pro se* to represent the AWPPW. Simon ffitch and Robert Cromwell, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Section, Office of Attorney General (Public Counsel). Robert D. Cedarbaum and Donald Trotter, Assistant Attorneys General, Olympia, Washington, represent the Commission's regulatory staff (Staff).

3 **MOTION TO AMEND PROTECTIVE ORDER:** During the prehearing conference on December 22, 2000, Complainants raised the suggestion that there might be a need to amend the Protective Order to provide for separate designation and a higher order of protection for documents asserted by parties to be highly confidential. During the Motions Conference on December 27, 2000, Respondent stated its view, consistent with the prior suggestion by Complainant, that such an amendment to the Protective Order should be considered. ALJ Moss stated he would take Respondent's request as an oral motion and granted the request to amend the Protective Order consistent with the Commission's practice in prior cases involving assertions that certain documents require heightened protection to facilitate discovery. Also on December 27, 2000, Complainant filed its Motion To Amend Protective Order. The Motion requests an amendment that is similar, but not identical, to that entered by the Commission in prior cases. To the extent the Motion requests an amendment that is identical in substance to what the Commission has allowed in other proceedings, it is granted. To the extent the Motion requests any variance from the Commission's prior practice in this regard, it is denied.

ORDER

4 THE COMMISSION ORDERS That its First Supplemental Order/Protective Order, entered in this proceeding on December 19, 2000, is amended by adding the following Section 6 to **Part B - Disclosure of Confidential Information:**

6. Intervenor in this proceeding are competitors, or potential competitors. Complainant and Respondent are customer and supplier. Any of these parties may receive discovery requests that

call for the disclosure of highly confidential documents or information, the disclosure of which imposes a significant risk of competitive harm to the disclosing party. Parties may designate documents or information they consider to be of that nature as “Highly Confidential” and such documents or information will be disclosed only in accordance with the provisions of this Section.

Parties must scrutinize carefully responsive documents and information and limit the amount they designate as highly confidential information to only information that truly might impose a serious business risk if disseminated without the heightened protections provided in this Section. The first page and individual pages of a document determined in good faith to include highly confidential information must be marked by a stamp that reads: "Highly Confidential Per Protective Order in WUTC Docket No. UE-001952." Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contains highly confidential information and will not serve to protect the entire contents of a multipage document. Each page that contains highly confidential information must be marked separately to indicate where highly confidential information is redacted. The unredacted versions of each page containing highly confidential information, and provided under seal, also must be marked with the “Highly Confidential . . .” stamp and should be submitted on paper distinct in color from non-confidential information and “Confidential Information” as described in Part A.1. of this Protective Order.

Parties other than Public Counsel and Staff who seek disclosure of highly confidential documents or information must designate one outside counsel and no more than one outside consultant, legal or otherwise, to receive and review materials marked “Highly Confidential . . .” In addition to executing the appropriate Agreement required by this Protective Order for “Confidential Information” each person designated as outside counsel or consultant for review of “Highly Confidential” documents or information must execute an affidavit, under oath, certifying that:

- a. They do not now, and will not for a period of five years, involve themselves in competitive decision making by any company or business organization that competes, or potentially competes, with the company or business organization from whom they seek disclosure of highly confidential information.**

b. They have read and understand, and agree to be bound by, the terms of the Protective Order in this proceeding and by this Amendment to the Protective Order.

Any party may object in writing to the designation of any individual counsel or consultant as a person who may review highly confidential documents or information. Any such objection must demonstrate good cause, supported by affidavit, to exclude the challenged counsel or consultant from the review of highly confidential documents or information. Written response to any objection must be filed within three days after service of the objection.

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. 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 reflect highly confidential information must be maintained in the secure location until 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. Appropriate procedures for including such documents or information will be determined by the presiding Administrative Law Judge following consultation with the parties.

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 Administrative Law Judge, or by the Commission.

At the conclusion of this proceeding, and the exhaustion of any rights to appeal, designated outside counsel 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.

Highly confidential documents and information will be provided to Staff and Public Counsel under the same terms and conditions of this Protective Order as govern the treatment of “Confidential Information” provided to Staff and Public Counsel and as otherwise provided by the terms of the Protective Order other than this Section 6.

DATED at Olympia, Washington, and effective this ____ day of

_____.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner