

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

[CAPTION]	DOCKET [NUMBER]  ORDER [XX]  PROTECTIVE ORDER
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**BACKGROUND**

1 The Washington Utilities and Transportation Commission (Commission) finds ~~that the~~ parties reasonably anticipate that discovery or evidentiary filings will require information designated as confidential pursuant to WAC 480-07-160 to be disclosed to parties that, in the absence of a protective order, would not be authorized to access that information. The Commission further finds that a protective order governing disclosure of information designated as confidential is necessary to protect the provider of that information while promoting the free exchange of information and development of the evidentiary record.~~a protective order to govern disclosure of proprietary and confidential information is necessary in this proceeding. The Commission provided the parties an opportunity to comment on the need for a protective order, considered their comments, and finds as follows:~~

- a. ~~It is likely that proprietary and confidential information will be required to resolve the issues in this proceeding;~~
- b. ~~Absent a protective order, a significant risk exists that confidential information might become available to persons who have no legitimate need for such information and that injury to the information provider could result.~~

2 Accordingly, the Commission enters ~~this following~~ protective order (Order) pursuant to RCW 34.05.446 and WAC 480-07-420 to govern the discovery and use of ~~proprietary and information designated as confidential documents~~ in this proceeding.;

**ORDER**

**A. General Provisions**

3 **Confidential Information.** All access, review, use, and disclosure of any material designated by a party to this proceeding as confidential pursuant to WAC 480-07-160

(referred to in this Order as "Confidential Information") is governed by this Order and by WAC 480-07-160. The Commission expects Confidential Information to include only numbers, customer names, and planning details. A party must limit the information it designates as confidential to information that reasonably could compromise the party's ability to compete fairly or that otherwise might impose a legitimate business risk to the party if the information is disclosed without the protections provided in this Order and WAC 480-07-160. The Commission requires the parties to delete such information from the primary exhibits and provide these "confidential deletions" under separate cover in the manner described below. The Commission may reject a filing or any other submission that fails to segregate Confidential Information, or categorizes clearly public information as confidential.

**Designating Confidential Information.** Parties must designate Confidential Information as required in WAC 480-07-160. The Commission may reject any filing that fails to properly designate or mark Confidential Information or that designates clearly public information as confidential. Parties must scrutinize potentially confidential material, and limit the amount they designate "Confidential Information" to only information that truly might compromise their ability to compete fairly or that otherwise might impose a business risk if disseminated without the protections provided in this Order. The first page and individual pages of a document determined in good faith to include Confidential Information must be marked by a stamp that reads: "Designated Information Confidential Per Protective Order in UTC Docket [NUMBER]." Placing a Confidential Information stamp on the first page of an exhibit indicates only that one or more pages contains Confidential Information and will not serve to protect the entire contents of the multi-page document. Each page that contains Confidential Information must be marked separately to indicate where confidential information is redacted. Confidential Information shall be provided on colored paper with references to where each number, customer name, or planning detail is redacted in the original document.

**Confidential and Redacted Versions.** Because the parties and the Commission are manipulating data and handling a number of open cases, and because confidentiality is more significant than it has been in the past, we must require **complete confidential and redacted versions of testimony, exhibits, and briefs.**

This extends to electronic versions, as well, and requires that **all discs and all electronic mail** specify whether the file is confidential, redacted, or public.

1. If a witness has a confidential portion of her testimony, the sponsoring party must provide a complete redacted version of the testimony and a complete confidential version, with confidential pages on color paper.

- ~~2. It also means that you must submit (at least) two discs and emails—one with the electronic version of the confidential text and one with the electronic version of the redacted text.~~
- ~~a. You MUST identify the confidential discs with prominent red markings and the word “confidential” in addition to the contents and the docket number. The others must be prominently labeled “redacted” or “public”.~~
- ~~b. You MUST identify each confidential digital file with a C in the file name and MUST have the legend “CONFIDENTIAL PER PROTECTIVE ORDER IN UTC DOCKET [NUMBER]” prominently displayed on the first page (i.e., the page that appears on the computer screen when the file is opened).~~

~~75 **Purpose of Access and Limitation on Use; Confidentiality.** No A party or counsel having access to Confidential Information distributed or obtained pursuant to this protective order may be requested, reviewed, used, or disclosed by any party or counsel having access pursuant to this order, that information only except for purposes of this proceeding. Persons having access to the Confidential Information pursuant to this order must request, review, use, or disclose Confidential Information only by or to persons authorized under this Order, and only in accordance with the terms specified in this Order.~~

## **B. Disclosure of Confidential Information**

~~86 **Persons Permitted Access.** No Confidential Information may be disclosed will be made available to anyone other than the Commissioners, Commission Staff, the presiding officer(s), and, subject to the requirements in paragraph 7 below, counsel for each of the parties ~~to~~for this proceeding, including each such counsel's ~~for Commission Staff, and attorneys' administrative staff, such as paralegals.~~ However, access to any Confidential Information may be authorized by counsel, solely for the purposes of this proceeding, to those and persons designated by the parties as their experts in this matter. ~~Except for the Washington Utilities and Transportation~~ No expert other than members of Commission Staff, ~~no such expert~~ may be an officer, director, direct employee, major shareholder, or principal of any party or any competitor of any party (unless the provider of the Confidential Information waives this restriction ~~is waived by the party asserting confidentiality~~). Any dispute concerning persons entitled to access Confidential Information must be brought before the presiding officer for resolution.~~

~~97 **Non-disclosure Agreement.** Before being allowed access to any Confidential Information disclosed in ~~designated for~~ this docket, each counsel or expert must agree to~~

comply with and be bound by this Order ~~by executing, filing, and serving on the form of~~ Exhibit A (counsel ~~and administrative staff~~) or Exhibit B (expert) attached to this Order ~~(collectively Non-disclosure Agreement). A counsel's administrative staff need not execute a Non-disclosure Agreement if counsel agrees to be responsible for any violation of this Order that results from his or her staff's conduct. Counsel for the party seeking access to the Confidential Information must deliver to counsel for the party producing Confidential Information a copy of each signed agreement, which must show each signatory's full name, permanent address, the party with whom the signatory is associated and, in the case of experts, the employer (including the expert's position and responsibilities). The party seeking access must also send a copy of the agreement to the Commission and, in the case of experts, tIf the provider of the party providing Confidential Information objects to allowing any expert to have access to such information, that party must shall complete the applicable its portion of the Non-disclosure Agreement for that expert, timely and file it with the Commission, and serve all parties. A party or waives any objection to allowing access to Confidential Information to an expert who has executed a Non-disclosure Agreement if the party fails to comply with this requirements as described in Exhibit B.~~

408 **Access to Confidential Information.** ~~Parties must comply with the requirements in WAC 480-07-160 and WAC 480-07-420 when providing documents containing Confidential Information to the Commission or persons who have executed a Non-disclosure Agreement. Copies of documents designated confidential under this Order will be provided in the same manner as copies of documents not designated confidential, pursuant to WAC 480-07-423. Requests for special provisions for inspection, dissemination or use of confidential documents must be submitted to the presiding officer if not agreed to by the parties. The parties must not distribute copies of documents containing Confidential Information to, or and they must not discuss the contents of such information confidential documents with, any person not bound by this Order. Persons who have executed a Non-disclosure Agreement agree to whom copies of documents are provided pursuant to this Order warrant by signing the confidentiality agreement that they will exercise all reasonable diligence to protect Confidential Information from disclosure to unauthorized persons maintain the documents consistent with the claim of confidentiality.~~

**C. Use of Confidential Information ~~in This Proceeding~~**

**Reference to Confidential Information.** ~~If reference is to be made to a~~ Any public reference to Confidential Information by counsel or persons afforded access to this information during any part of this proceeding including, but not limited to, in motions, briefs, arguments, direct testimony, cross-examination, rebuttal, and proposed offers of

proof, must not disclose the content or substance of that information, directly or indirectly~~any public reference (i.e., any reference that will not be placed in a sealed portion of the record)~~ shall be either solely by title or by exhibit reference.

~~119~~ The parties must negotiate how best to prevent unauthorized disclosure of Confidential Information with the goal of protecting each party's rights with respect to Confidential Information while allowing all parties the latitude to present the evidence necessary to support their respective cases and to maximize the information available to the public. If the parties cannot reach agreement about how to use or refer to Confidential Information without disclosing it in violation of this Order, they must notify the presiding officer, who will determine the arrangements to protect the Confidential Information to ensure that all parties are afforded their full due process rights, including the right to cross-examine witnesses.~~Any other written reference shall be segregated and marked "Confidential Information," and access to it shall be given solely to persons who are authorized access to the information under this Order. References to the Confidential Information must be withheld from inspection by any person not bound by the terms of this Order.~~

~~112~~ Counsel or other representative of any party that intends to disclose Confidential Information during~~In~~ oral testimony, cross-examination, or argument, public references to Confidential Information must give~~be on~~ such prior notice as is feasible to the provider of that information~~affected party~~ and the presiding officer. Unless alternative arrangements exist to protect the Confidential Information as provided below, there must be minimum sufficient~~That~~ notice, at a minimum, must~~to~~ permit the presiding officer an opportunity to clear the hearing room of persons not bound by this Order or to take such other action as is appropriate in the circumstances.

~~1310~~ **Protected Use by Agreement.** ~~Any party who intends to use any Confidential Information in the course of this proceeding, including but not limited to testimony to be filed by the party, exhibits, direct and cross-examination of witnesses, rebuttal testimony, or a proffer of evidence, shall give reasonable notice of such intent to all parties and to the presiding officer, and attempt in good faith to reach an agreement to use the Confidential Information in a manner which will protect its trade secret, proprietary, or other confidential nature. The parties shall consider such methods as use of clearly edited versions of confidential documents, characterizations of data rather than disclosure of substantive data, and aggregations of data. The goal is to protect each party's rights with respect to Confidential Information while allowing all parties the latitude to present the evidence necessary to their respective cases.~~

~~114~~ If the parties cannot reach agreement about the use of Confidential Information, they must notify the presiding officer, who will determine the arrangements to protect the

~~Confidential Information to ensure that all parties are afforded their full due process rights, including the right to cross-examine witnesses.~~

~~1511~~ **Right to Challenge Admissibility.** Nothing in this Order may be construed to restrict any party's right to challenge the admissibility or use of any Confidential Information on any ground other than confidentiality, including but not limited to competence, relevance, or privilege.

~~12~~ **Right to Challenge Confidential Designation.** Any party by motion or the Commission on its own initiative may challenge ~~another~~ party's designation of information as confidential~~assertion of confidentiality with respect to any information asserted to be entitled to protection~~ under WAC 480-07-160 and this Order. The ~~p~~Presiding officer will conduct an *in camera* hearing to determine the propriety of the designation~~confidentiality of information~~. ~~The~~ burden of proof to show that such information is properly designated~~classified~~ as confidential is on the party that made that designation~~asserting confidentiality~~. Pending a Commission determination, the ~~challenged~~assertedly Confidential Information shall be treated in all respects as protected under the terms of this Order. The presiding officer will make his or her determination orally on the record or in a written order.

~~1613~~ If the presiding officer determines the challenged information is not entitled to protection under this Order and WAC 480-07-160, the information will ~~continues~~ be protected under this Order for ten days from the date of the presiding officer's determination. If a party thereafter to enable the producing party to seeks Commission or judicial review of the determination within that time, the Commission will~~including a stay of the determination pending an order from the Commission or a decision by a reviewing court. decision's effect pending further review~~If no party seeks Commission or judicial review of the presiding officer's determination within 10 days, or if the Commission and any reviewing court upholds that determination, the Commission will require the challenged information to be refiled without the confidential designation or otherwise treated as public information.

~~1714~~ **Admission of Confidential Information Under Seal.** The portions of the record of this proceeding containing Confidential Information will be sealed for all purposes, including administrative and judicial review, unless such Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to a lawful order of the Commission or of a court having jurisdiction to do so.

~~1815~~ **Return of Confidential Information.** Within thirty days following the conclusion of this proceeding, including any administrative or judicial review.~~At the conclusion of this proceeding~~ every person who has executed a Non-disclosure Agreement and possesses or

~~controls~~ any Confidential Information (including personal notes that make substantive reference to Confidential Information), ~~either~~ must return all Confidential Information to the party that ~~provided~~ ~~dueed~~ it; or must certify in writing that all copies and substantive references to Confidential Information in notes have been destroyed; ~~PROVIDED,~~ ~~within thirty days following the conclusion of this proceeding, including any administrative or judicial review. These provisions apply to all copies of exhibits which contain Confidential Information and for that reason were admitted under seal. The only exceptions are that counsel may retain exhibits that contain Confidential Information may be preserved by counsel as counsel records subject to the terms and conditions of this Order, and a complete record, including Confidential Information, will be preserved by the Executive Secretary of the Commission as part of the Agency's official records.~~

1916 **Freedom of Information Laws.** Until the Commission or any court having jurisdiction finds that any particular Confidential Information is not ~~properly designated as confidential pursuant to WAC 480-07-160 of a trade secret, proprietary, or confidential nature~~, any federal agency that has access to and/or receives copies of the Confidential Information must treat the Confidential Information as within the exemption from disclosure provided in the Freedom of Information Act at 5 U.S.C. § 552 (b)(4); and any Washington state agency that has access to and/or receives copies of the Confidential Information must treat the Confidential Information as being within the exemption from disclosure provided in RCW 42.56.210.

2017 **Notice of Compelled Production in Other Jurisdictions.** If a ~~person who has executed a Non-disclosure Agreement signatory to this protective o~~Order is compelled to produce ~~confidential~~ documents ~~containing Confidential Information~~ in any regulatory or judicial proceeding by the body conducting the proceeding, the ~~person signatory~~ must provide notice to the party that provided the ~~C~~confidential ~~I~~nformation. Such ~~C~~confidential ~~I~~nformation must not be produced for at least five ~~business~~ days following ~~such~~ notice, to permit the party that provided ~~the such~~ information an opportunity to defend the ~~protected status~~~~confidential nature~~ of the material before the regulatory or judicial body that would compel production. Disclosure after that date, in compliance with an order compelling production, is not a violation of this Order.

2118 **Modification.** The Commission may modify this Order on motion of a party or on its own motion upon reasonable prior notice to the parties and an opportunity for hearing.

2219 **Violation of this Order.** Violation of this Order by any party to this proceeding or by any other person bound by this Order by unauthorized use or unauthorized ~~disclosure~~~~divulgence~~ of Confidential Information may subject such party or person to liability for damages and shall subject such party to penalties as generally provided by law.

**DOCKET [NUMBER]**  
**ORDER [XX]**

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DATED at Olympia, Washington, and effective [DATE].

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

[NAME]  
Administrative Law Judge

**EXHIBIT A (ATTORNEY AGREEMENT)**

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION  
IN DOCKET [NUMBER]  
BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, \_\_\_\_\_, as attorney in  
this proceeding for \_\_\_\_\_ (party to  
this proceeding) agree to comply with and be bound by the Protective Order entered by  
the Washington Utilities and Transportation Commission in Docket [NUMBER], and  
acknowledge that I have reviewed the Protective Order and fully understand its terms and  
conditions. I further agree to be responsible for any violations of the Protective Order that  
result from the conduct of administrative staff I allow to have access to Confidential  
Information.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

**EXHIBIT B (EXPERT AGREEMENT)**

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION  
IN DOCKET [NUMBER]  
BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, \_\_\_\_\_, as expert witness in this proceeding for \_\_\_\_\_ (a party to this proceeding) hereby agree to comply with and be bound by the Protective Order entered by the Washington Utilities and Transportation Commission in Docket [NUMBER] and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Address

\_\_\_\_\_  
Position and Responsibilities

\* \* \*

The following portion is to be completed by the responding party and filed with the Commission within 10 days of receipt; failure to do so will constitute a waiver and the above-named person will be deemed an expert having access to Confidential Information under the terms and conditions of the protective order.

\_\_\_\_\_ No objection.

\_\_\_\_\_ Objection. The responding party objects to the above-named expert having access to Confidential Information. The objecting party shall file a motion setting forth the basis for objection and asking exclusion of the expert from access to Confidential Information.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date