

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

Docket No. _____

DECLARATION OF ERIC M. MARKELL
IN SUPPORT OF PSE'S MOTION FOR
AMENDED PROTECTIVE ORDER WITH
HIGHLY CONFIDENTIAL PROVISIONS

1 I, Eric M. Markell, hereby declare under penalty of perjury under the laws of the
State of Washington that the following are true and correct:

2 I am Senior Vice President Energy Resources for Puget Sound Energy, Inc. ("PSE"
or "the Company"). My responsibilities include oversight of PSE's long-term contracts for
electric supply and generation resource acquisition. In that role, I have taken an active part
in negotiating most of the long-term power purchase contracts or generating plant
acquisitions that PSE has undertaken in the last several years. I have personal knowledge of
the matters set forth in this Declaration and, as to matters that call for an opinion, state such
opinion on information and belief based on my experience in the industry and with the
Company.

3 The Company is requesting a protective order with "highly confidential" provisions
to protect certain material contained in its February 15, 2006 general rate case ("2006
GRC") filing because inappropriate release of that material would impose a highly
significant risk of competitive harm to PSE and to the owners and developers of power

resources that participated in PSE's 2003-2004 competitive bidding process under Chapter 480-107 WAC ("2004 RFP Process").

4 PSE's Requests for Proposals (RFPs) for wind resources and for all generation resources required entities that wished to sell power resources to the Company to provide detailed, extensive information about their generation resources (many of which were in the development stage) and the terms of the transactions they proposed to the Company. Such information is extremely commercially sensitive because these owners and developers are competing against each other to sell their projects or power from their projects, to obtain financing for their projects, and in some cases to obtain the necessary permits and real estate rights for their projects. In many cases if the bidders were not successful in reaching an agreement with PSE to purchase the project, they planned to re-bid the project to other utilities.

5 In recognition of the sensitivity of the information PSE was requesting, the RFPs the Commission approved for issuance in Docket No. UE-031353 included a confidentiality agreement under which the Company agreed to protect from inappropriate disclosure any confidential information submitted by entities responding to the RFPs. The Company subsequently executed such agreements with project proposers. Among other things, the Company agreed that if PSE's decisions were at issue in a Commission proceeding, PSE would seek a protective order from the Commission with "highly confidential" provisions to protect against disclosure of the information to competitors and the public.

6 The Company and its customers also have an interest in protecting against disclosure of such information to the public or to developers or owners who are competing or potentially competing against each other in the industry for at least two reasons: (1) because such developers or owners should not be put in the position of being able to "game" the RFP

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process by having access to confidential information about their competitors or potential competitors merely by intervening in the 2006 GRC proceeding; and (2) because if PSE is to attract a broad slate of proposals in response to future RFPs, developers or owners considering submitting proposals must have confidence that the confidentiality of their sensitive commercial information will be respected, notwithstanding the fact that PSE's resource acquisitions are subject to some degree of public scrutiny through the regulatory process.

7 In addition, the Company has marked a limited subset of additional information as "highly confidential" that was not submitted by project developers or owners, but that is highly commercially sensitive to PSE. Such information includes references to the Company's negotiating strategies, detailed results of cost analyses performed by the Company, and detailed cost information about resources outside the RFP process, including the PSE-owned Baker River Hydroelectric Project and the new long-term purchase power agreement that PSE has just entered into with Public Utility District No. 1 of Chelan County. Release of such information to owners or developers of project resources, to the counterparties to the Company in those transactions, or to potential counterparties for additional such transactions, would harm the Company and its customers because it would undercut the Company's negotiating position.

8 To help the Commission and parties understand the Company's concerns, I would like to explain why the Company has marked as "highly confidential" its estimated levelized dollar per megawatt hour (\$/MWh) projections for each of the long-term resource acquisitions presented for approval in the 2006 GRC, especially when the estimated levelized \$/MWh projection for the Hopkins Ridge Wind Project was not marked as "highly confidential" or even as "confidential" in the 2005 PCORC case, Docket No. UE-050870.

The Hopkins Ridge Wind Project was the least cost resource to emerge from the 2004 RFP Process. To the extent others in the industry are looking to meet or beat the cost of that resource in negotiations with PSE, it is more likely to have beneficial than harmful impacts to PSE's customers. However, the additional two resources presented in the 2006 GRC that were acquired out of the 2004 RFP Process (the Wild Horse Wind Project and the ORMAT Recovered Heat PPA), although the next most favorable projects, were not as favorable as the Hopkins Ridge Project. PSE's counterparties and potential counterparties to additional resource acquisitions should not be permitted to know the cost level that PSE was willing to incur to acquire these projects. Similarly, PSE's counterparties to hydro resource transactions with PSE should not be permitted to know how much PSE believes the terms of the recent hydro acquisitions will cost PSE, or how these costs compare with other resource alternatives available to PSE.

9 The likely result of release of any of the "highly confidential" information to owners or developers of energy resources, or to persons or entities that represent or advise them, would be increased costs for the Company and, ultimately, its customers. This is because there would be a tendency on the part of project proposers and counterparties to use such information to benchmark their transactions with the Company against these other transactions in a sort of "most favored nation" view of negotiations over their particular projects. Instead of being provided with the information that would give them such leverage, counterparties should be required to focus on the cost structures of their own projects when negotiating with the Company.

10 These are significant and pressing concerns given the Company's ongoing need to acquire additional electric resources to serve its customers. Indeed, the Company has already begun analyzing project proposals that were recently submitted to the Company in

response to its 2006 RFP process under WAC Chapter 480-107. Discussions and negotiations with project developers will be ongoing over the next year or more regarding what may well be the next tranche of PSE resource acquisitions.

11 The Company respects the concerns expressed by other parties in the 2005 PCORC that the "highly confidential" designation should not be applied lightly. PSE has been careful in its 2006 GRC filing to minimize the amount of information designated "highly confidential." For example, the Company is releasing as public information its analyses of the net present value benefits to PSE's electric portfolio of the various resources presented in the case. PSE does not believe that counterparties could "back into" commercially sensitive information from those figures, and they are helpful for other parties to understand why the Company agreed to the terms of each acquisition. In addition, the Company has sought to provide explanations in the text of its filing of the relative attractiveness of the various resources as to each other and other alternatives available to the Company. In some cases, "approximate" figures have been provided publicly, with the "highly confidential" commercial information provided in parenthesis after the public figure. Taken all together, the Company believes that the public can understand and other parties can productively participate in the 2006 GRC without access to the "highly confidential" information.

12 For these reasons, the Company is asking that the Commission issue a protective order with "highly confidential" provisions that permits the Company to designate information as "highly confidential" in its testimony, exhibits, workpapers, responses to data requests, briefing and in hearings. The Company is also asking that only the Commission Staff and Public Counsel have access to such "highly confidential" information. Any further release to experts for Commission Staff or Public Counsel, or to any other parties who intervene in the 2006 GRC filing, should be subject to a showing that such persons or

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entities are not current or potential owners or developers of energy resources or consultants or advisors to such owners or developers. The need for such limitation is not speculative. I understand that at least one of the intervenor experts in PSE's 2005 PCORC provides consulting services to entities that are potentially in a position to compete with other providers of energy resources.

13 Finally, with respect to treatment of "highly confidential" material, the Company is asking for limitations on copying and handling of such materials by parties who are entitled to access such materials in order to reduce the risk of inadvertent disclosure.

Executed this 14th day of Feb., 2006, at Bellevue, Washington.


Eric M. Markell