

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

Docket No. UE-111048

Docket No. UG-111049

PUGET SOUND ENERGY, INC.'S
WITHDRAWAL OF MOTION BASED ON
SWORN STATEMENTS FILED BY MR.
FFITCH AND MS. DAVISON

I. INTRODUCTION

1. Puget Sound Energy, Inc. ("PSE") has reviewed the Industrial Customers of Northwest Utilities' ("ICNU") Response in Opposition to PSE's Motion Objecting to the Confidentiality Status of ICNU ("ICNU's Response") and the declarations filed in support thereof, including the declaration of the attorney for Public Counsel, Simon ffitich. Having reviewed these documents, and under the particular facts that are present in this case, including the plan that Public Counsel and ICNU have put in place to protect against inadvertent disclosure of PSE's highly confidential material, PSE hereby withdraws its Motion Objecting to the Confidentiality Status of ICNU ("PSE's Motion").

II. DISCUSSION

2. PSE's Motion requested that the Commission require ICNU's lead counsel, Melinda Davison, to be bound to the obligations set forth in the Highly Confidentiality Information

Agreement that she signed on June 27, 2011. PSE's Motion further requested that the Commission either 1) require all attorneys and consultants for a given intervenor to have the same confidentiality status or 2) require ICNU to provide a detailed plan as to how it intends to protect PSE's highly confidential information from disclosure.

3. In response to PSE's Motion, Ms. Davison filed a declaration in which she declared under penalty of perjury that she has not reviewed any confidential or highly confidential material in this proceeding.¹ In addition, Mr. ffitch filed a declaration providing new information regarding a plan put into place in late August by ICNU and Public Counsel to co-sponsor a joint witness on certain power cost issues and to ensure that no highly confidential information is disclosed to ICNU attorneys other than Jesse Cowell.² In particular, Mr. ffitch states that Mr. Cowell, ICNU's attorney who has signed the Highly Confidential Information Agreement, will be the point of contact for all communication regarding highly confidential information.³ Further, Mr. ffitch states that ICNU counsel represented to him that highly confidential information would not be disclosed to others within the law firm who had not signed the Highly Confidential Information Agreement.⁴ Based on the particular facts presented here, and specifically the representations made by Mr. ffitch and Ms. Davison in their declarations, PSE is willing to withdraw its motion at this time. However, PSE continues to be concerned that inadvertent disclosure is more likely to occur when attorneys who are actively representing a given client in

¹ See Declaration of Melinda J. Davison in Support of ICNU Response in Opposition to PSE's Motion Objecting to the Confidentiality Status of ICNU ("Davison Decl.") at ¶ 3.

² See Declaration of Simon ffitch in Response to PSE Motion Objecting to ICNU Confidentiality Status ("ffitch Decl.") at ¶¶ 7-8.

³ See *id.* at ¶ 8.

⁴ See *id.* at ¶ 7.

a particular case, have varying levels of access to confidential and highly confidential information. PSE's withdrawal of its motion in this case is not intended to waive PSE's right to raise a similar objection in the future if counsel and consultants for a particular client have varying levels of access to confidential information; nor is it intended to waive PSE's right to object in future situations where counsel or consultants who have signed Highly Confidential Information Agreements and who have received highly confidential information seek later to rescind the agreement.

4. PSE does not find it necessary to reply to each of ICNU's assertions, but it is necessary to clarify two points.⁵ First, the situation in Docket UE-070725, cited in ICNU's response, is distinguishable from the case at hand. In Docket UE-070725, ICNU requested prior to issuance of the Protective Order that special arrangements be made to allow one of its experienced attorneys and its consultant to review highly confidential information regarding renewable energy credits ("RECs"). ICNU and PSE worked out a revised version of the Protective Order and Highly Confidential Information Agreement, specifically addressing the subject matter of RECs, that Irion Sanger and Don Schoenbeck signed.⁶ No such special arrangements were requested by ICNU in this case. PSE stands by the statement made in its motion that "[i]n past PSE *general rate cases*, none of ICNU's attorneys or consultants signed Highly Confidential Information Agreements"⁷ Moreover, PSE continues to believe that uniformity of

⁵ PSE also disagrees with ICNU's interpretation of language in the Protective Order, among other things. However, given that PSE is withdrawing its motion based on the particular facts present here, PSE will not engage in further analysis of the language of the protective order or other issues of disagreement beyond those set forth herein.

⁶ See Docket UE-070725, Order 02 at ¶ 14; TR. 10:15-24 (Vol. 1).

⁷ PSE Motion at n.3 (emphasis added). Further, Docket UE-050870, also cited by ICNU, was not a general rate case.

confidentiality status among attorneys within a firm is preferable in terms of protecting against inadvertent disclosure of confidential or highly confidential information.

5. Second, PSE does not agree with ICNU's assertion that PSE accepted Ms. Davison's offer to revoke her Highly Confidential Information Agreement when PSE stopped sending highly confidential information to Ms. Davison on August 15. Rather, PSE acted prudently when it stopped providing highly confidential information to Ms. Davison given the differing views as to Ms. Davison's confidentiality status and while PSE raised the issue with the Commission. Now, in response to PSE's Motion, Ms. Davison has declared under penalty of perjury that she has not reviewed any of the confidential or highly confidential material in this proceeding. In light of this, PSE is willing to withdraw its motion and objection at this time.

III. CONCLUSION

6. Given the additional information provided by ICNU and Public Counsel in sworn statements filed with the Commission in response to PSE's Motion, PSE withdraws its motion and objection to ICNU's confidentiality status at this time.

DATED: September 9, 2011

Respectfully Submitted,

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