

**-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-**

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IN THE MATTER OF AN APPLICATION )	
FOR A WAIVER PURSUANT TO UTAH )	
CODE ANN. SECTION 54-17-501 )	<u>GENERIC PROTECTIVE ORDER</u>
)	
)	

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ISSUED: \_\_\_\_\_

By the Commission:

On March 14, 2007, the Governor of the state of Utah signed into law Senate Bill 235, which amends certain provisions of the Energy Resource Procurement Act, as codified in §54-17-101 *et seq.* Senate Bill 235 mandates that the Public Service Commission of Utah (“Commission”) issue a generic protective order governing access to and use of confidential information that a utility submits with its application for a waiver pursuant to §54-17-501. Accordingly, in compliance with §54-17-501(12), the Commission issues the following generic protective order.

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. (A) Confidential Information. All documents, data, information, studies and other materials furnished with an application or that are otherwise made available to the parties as part of a proceeding for an application for a waiver pursuant to §54-17-501, or otherwise obtained by a party to a proceeding for an application for a waiver, and that are claimed to be of a trade secret or confidential nature, shall be furnished pursuant to the terms of this Order, and shall be treated by all persons accorded access thereto pursuant to this Order as constituting trade secret, confidential commercial, or otherwise protected information (hereinafter referred to as "Confidential Information"), and shall neither be used nor disclosed except for the purpose of an application for a waiver pursuant to §54-17-501, and solely in accordance with this Order. All

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material claimed to be Confidential Information shall be so marked by the party or its affiliates by stamping the same with the designation **“CONFIDENTIAL - - SUBJECT TO PROTECTIVE ORDER PURSUANT TO §54-17-501”** and submitting the copy on yellow paper, or if the material is in an electronic format, the electronic version of the material shall be clearly marked as being confidential. For purposes hereof, any notes made pertaining to or as the result of a review of Confidential Information shall also be considered Confidential Information and subject to the terms of this Order.

(B) Use of Confidential Information and Persons Entitled to Review. All Confidential Information made available pursuant to this Order shall be given solely to counsel for the parties, which shall include the Division of Public Utilities (the “Division”) and the Committee of Consumer Services (the “Committee”) (including counsels’ paralegals, administrative assistants, and clerical staff to the extent necessary for performance of work on this matter), the independent evaluator (if one is participating) (including such Independent Evaluator’s administrative assistants and clerical staff, and persons employed by the parties, to the extent necessary for performance of work on this matter), and the designated representative (such designated representative shall not include persons employed by an interested party who have competitive job functions and could use such Confidential Information to the competitive disadvantage of the party providing the Confidential Information) of all other interested parties that have requested notice of applications for a waiver pursuant to §54-17-501 and that are listed on the service list that is maintained and published by the Commission on its internet website, each of whom shall have signed a copy of Appendix A, in the form attached hereto and

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incorporated herein. The Confidential Information shall not be used nor disclosed except for the purpose of a proceeding before the Commission on an application for a waiver pursuant to §54-17-501; provided, however, that access to any specific Confidential Information may be authorized by counsel, solely for the purpose of a proceeding on an application for a waiver, to those persons indicated by the parties as being their experts in the matter (including such experts' administrative assistants and clerical staff, and persons employed by the parties, to the extent necessary for performance of work on this matter). However, persons designated as experts shall not include persons employed by the parties who have competitive job functions and could use such information to the competitive disadvantage of the party providing the Confidential Information. Any member of the Public Service Commission and its staff, under and pursuant to the applicable provisions of Title 54, Utah Code Ann., the Rules of Civil Procedure and the Rules of the Commission, may have access to any Confidential Information made available pursuant to this Order and shall be bound by the terms of this Order, except for the requirement of signing Appendix A. Further, nothing herein shall prevent disclosure as required by law pursuant to applicable state and federal statutes or court rules, administrative requests for information or documents, subpoena, civil investigative demand or similar process, provided, however, the party being required to disclose Confidential Information shall promptly and no later than three business days give prior notice by telephone and written notice of such requirement of disclosure by facsimile and overnight mail to the party that provided such Confidential Information, addressed to the attorneys of record for such party, so that the party that provided the Confidential Information may seek an appropriate protective order. The

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disclosing party will not oppose action by, and will cooperate with the party that provided the Confidential Information to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded that Confidential Information.

(C) Nondisclosure Agreement. Prior to giving a person access to Confidential Information, as contemplated in paragraph 1(B) above, counsel or the interested party's designated representative for the interested party seeking review of the Confidential Information shall deliver a copy of this Order to such person and, prior to disclosure, such person shall agree in writing to comply with and be bound by this Order by signing a copy of Appendix A, which signifies that the person has read the Generic Protective Order and that he or she agrees to be bound by the terms and conditions of this Generic Protective Order. Confidential Information shall not be disclosed to any person who has not signed a copy of Appendix A hereto. Appendix A shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such executed Appendix A shall be delivered to counsel for the providing party prior to the expert gaining access to the Confidential Information.

(D) Additional protective measures. A provider of documents and information may claim that additional protective measures, beyond those required under this Protective Order, are warranted for certain confidential material because it contains highly sensitive documents and information or because an interested party who is on the Commission's service list is in a position to use the Confidential Information for a competitive, conflicting, or otherwise prohibited purpose (herein, "Competing Interest"). In such case, the provider shall identify such documents and information, or potential Competing Interests, and shall inform the

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Commission of the claimed highly sensitive nature or the potential Competing Interests at the time of filing the application for a waiver, or as soon thereafter as possible. The provider of the Confidential Information may also petition the Commission for an order granting additional protective measures, which the petitioner believes are warranted for the claimed highly sensitive documents and information or the disclosure to a potential Competing Interest. The provider shall set forth the particular basis for: the claim, the need for the specific, additional protective measures, and the reasonableness of the requested, additional protection. A party who would otherwise receive the documents and information under the terms of this Protective Order may respond to the petition and oppose or propose alternative protective measures to those requested by the provider of the information. Disputes between the parties shall be resolved pursuant to a Commission order pursuant to Paragraph 2 of this Protective Order.

2. (A) Challenge to Confidentiality or Proposed Additional Protective Measures.

This Order establishes a procedure for the expeditious handling of Confidential Information; it shall not be construed as an agreement, or ruling on the confidentiality of any document.

(B) In the event that the parties hereto are unable to agree that certain documents, data, information, studies, or other matters constitute Confidential Information, constitute highly sensitive documents and information, or are unable to agree that a party is a potential Competing Interest, or if the parties are unable to agree on the appropriate treatment of highly sensitive documents and information or the appropriate treatment of a Competing Interest, the party that objects to the classification as Confidential Information or the party claiming that certain documents and information are highly sensitive or that is claiming the existence of a Competing

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Interest, shall forthwith submit the said matters to the Commission for its review pursuant to this Order. After the Commission rules on the matter, the Commission will enter an order resolving the issue.

(C) Any party at any time upon three (3) business days prior notice may seek by appropriate pleading, to have documents that have been designated as Confidential Information, or which were accepted into the sealed record in accordance with this Order, removed from the protective requirements of this Order, or from the sealed record and placed in the public record. If the confidential or proprietary nature of this information is challenged, resolution of the issue shall be made by the Commission after proceedings *in camera*, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential matter shall be present. The record of such *in camera* hearings shall be marked **“CONFIDENTIAL - - SUBJECT TO PROTECTIVE ORDER PURSUANT TO §54-17-501,”** and it shall be transcribed only upon agreement by the parties, or Order of the Commission. In that event, the record shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order, unless and until released from the restrictions of this Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to an Order of the Commission. In the event the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this Order, or from the protection of the sealed record, such Order of the Commission shall not be effective for a period of five (5) days after entry of the Order.

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3. (A) Receipt into Evidence. Provision is hereby made for receipt of evidence in a proceeding under seal. At least three (3) business days prior to the use of or substantive reference to any Confidential Information as evidence, the party intending to use such Confidential Information shall make that intention known to the providing party. The requesting party and the providing party shall make a good faith effort to reach an agreement so that the information can be used in a manner that will not reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing party shall separately identify, within two (2) business days, which portions, if any, of the documents to be offered or referenced on the record containing Confidential Information shall be placed in the sealed record. Only one (1) copy of documents designated by the providing party to be placed in the sealed record shall be made and only for that purpose. Otherwise, parties shall make only general references to Confidential Information in these proceedings.

(B) Seal. While in the custody of the Commission, these materials shall be marked “**CONFIDENTIAL - - SUBJECT TO PROTECTIVE ORDER PURSUANT TO §54-17-501,**” and due to their nature they shall not be considered as records in the possession of or retained by the Commission within the meaning of the open meetings or public records statutes.

(C) In Camera Hearing. Any Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an *in camera* hearing, attended only by persons authorized to have access to the Confidential Information under this Order. Similarly, cross-examination on or substantive reference to Confidential

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Information, as well as that portion of the record containing references thereto, shall be marked and treated as provided herein.

(D) Appeal. Sealed portions of the record in a proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as designated herein, for the information and use of the court.

(E) Return. Unless otherwise ordered, Confidential Information, including any transcripts to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for the providing party within 30 days after final settlement, or conclusion of the matter in which they were provided, including administrative, or judicial review thereof. Alternatively, an officer of an interested party receiving Confidential Information pursuant to the terms of the Order may certify, within 30 days after final settlement, or conclusion of the matter including administrative, or judicial review thereof, that the Confidential Information has been destroyed. Counsel who are provided access to Confidential Information pursuant to the terms of this Order may retain their notes, work papers or other documents that would be considered the attorneys' work product created with respect to their use and access to Confidential Information in this docket. An independent evaluator (if one is participating), who is accorded access to Confidential Information pursuant to this Order, shall provide to counsel for the providing party, the independent evaluator's notes, work papers or other documents pertaining or relating to any Confidential Information. An expert witness who is accorded access to Confidential Information pursuant to this Order, shall provide to counsel for the party on whose behalf the expert was



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retained or employed, the expert's notes, work papers or other documents pertaining or relating to any Confidential Information. Counsel shall retain these expert's documents with counsel's documents. In order to facilitate their ongoing regulatory responsibility, this paragraph shall not apply to the Commission, the Division, or the Committee, which may retain Confidential Information obtained under this Order subject to the other terms of this Order. The Division may release or disclose Confidential Information obtained in a matter to other parties in subsequent Commission dockets or proceedings, pursuant to the terms of applicable protective orders issued in such other subsequent Commission dockets or proceedings. The providing party shall nonetheless be notified in advance by any state regulatory agency which intends to use, release or disclose any of the retained Confidential Information in any subsequent case pursuant to the terms herein.

4. Use in Pleadings. Where reference to Confidential Information in the sealed record is required in pleadings, comments, cross-examinations, briefs, arguments, or motions, it shall be by citation of title, or exhibit number, or by some other nonconfidential description. Any further use of, or substantive references to Confidential Information shall be placed in a separate section of the pleading, or brief and submitted to the Commission under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed a copy of Appendix A. All the protections afforded in this order apply to materials prepared and distributed under this paragraph.

5. Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general or conclusionary form and will avoid reproduction in

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any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in a proceeding to discuss Confidential Information other than in a general or conclusionary form, it shall be placed in a separate section of this Order, or Decision, under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed a copy of Appendix A. Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed a copy of Appendix A.

6. Segregation of Files. Those parts of any writing, written examination, or any other written references to Confidential Information in the course of a proceeding for an application for a waiver pursuant to §54-17-501, if filed with the Commission, will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Confidential Information is released from the restrictions of this Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to the Order of the Commission and/or final order of a court having jurisdiction.

7. Prohibited Purpose/Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this Order, and by executing Appendix A hereto, so represent and warrant that they shall neither use, nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of a proceeding pursuant to §54-

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17-501, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this Order.

8. Identification of Competing Interest.

(A) Agreement to Participate. Prior to filing a request for waiver pursuant to §54-17-501, the affected electric utility may schedule a prefiling meeting by providing notice to all interested parties that have requested notice from the Commission of waiver requests and that are listed on the Commission's Internet website, and each person who signs a copy of this generic protective order hereby agrees to participate (either in person, by telephone, or some other means), either directly or through a designated representative, in such prefiling meeting.

(B) Prefiling Meeting. At the prefiling meeting, the affected electric utility shall notify each party of the general nature of the request for waiver and shall identify the basis for seeking a waiver. Such notification of the general nature and the basis for filing a request for a waiver shall be considered Confidential Information and shall be treated as such in accordance with the terms and conditions of this Order.

(C) Notification of Conflict. At the conclusion of the prefiling meeting, each party who has executed a copy of Appendix A to this Order shall immediately, and no later than three days, notify the affected electric utility and the Commission, in writing, whether such party has any association, interest, or involvement or any conflicting, competitive, or other business opportunity that could be considered by the affected electric utility as being a Competing Interest, as described in section 1 (D) of this Order and, as a result, should not receive a copy of the material submitted by the affected electric utility as part of its request for a waiver pursuant

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to §54-17-501. Furthermore, if the affected electric utility reasonably believes that, after conducting the prefiling meeting, there are certain parties who qualify as a Competing Interest, then the affected electric utility may request additional protective measures from the Commission prior to serving a copy of the application or other materials as provided in section 1(D) of this Order.

9. Reservation of Rights. The parties hereto affected by the terms of this Protective Order further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Order. This Order shall in no way constitute any waiver of the rights of any party to contest, in accordance with Paragraph 2 of this Order, any assertion by a party, or finding by the Commission that any information is a trade secret, confidential, or privileged, and to appeal any assertion or finding.

10. The provisions of this Order are specifically intended to apply to all documents, data, information, studies, and other materials furnished by or from any party or non-party in a proceeding before this Commission for an application for a waiver pursuant to §54-17-501.

DATED at Salt Lake City, Utah, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

/s/ Richard M. Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

**APPENDIX A**

**Generic Protective Order for an  
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I have reviewed the Generic Protective Order entered by the Public Service Commission of Utah for an application for a waiver pursuant to §54-17-501 with respect to access to and use of confidential information, and agree to comply with the terms and conditions of the Generic Protective Order.

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Signature

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Name (Type or Print)

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Personal Address

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Employer or Firm

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Business Address

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Party Represented

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Date Signed