

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of an Application for a Waiver Pursuant to Utah Code Ann. Section 54-17-501))))))	<u>DOCKET NO. 07-999-03</u> <u>PROTECTIVE ORDER</u>
-------------------------------------------------------------------------------------------------	----------------------------	------------------------------------------------------------

ISSUED: April 17, 2007

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 a person as part of an application for a waiver pursuant to §54-17-501, or otherwise obtained by a person who is 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

DOCKET NO. 07-999-03

-2-

a waiver pursuant to §54-17-501, and solely in accordance with this Order. All 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 to: (I) designated counsel for each person or entity that has made a request to receive notice of applications for a waiver pursuant to §54-17-501 and that is listed on the service list maintained and published by the Commission on its internet website (the “Service List”), as well as the designated person for the Division of Public Utilities (the “Division”), the Committee of Consumer Services (the “Committee”), (ii) the independent evaluator (if one is participating and has been designated), and (iii) the designated representative of any other person or entity, not represented by counsel, who has requested service of an application for a waiver pursuant to §54-17-501 (each is referred to herein as an “Interested Party”).

Each Interested Party shall have signed a copy of Appendix A, in the form attached hereto and incorporated herein prior to receipt of any Confidential Information, unless otherwise exempted by this Order

DOCKET NO. 07-999-03

-3-

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 or as provided herein; provided, however, that access to any specific Confidential Information may be authorized by an Interested Party solely for the purpose of a proceeding on an application for a waiver, to paralegals, administrative assistants, clerical staff, and other persons employed by the Interested Party, to the extent necessary for performance of work on this matter. Access to the Confidential Information may also be authorized by an Interested Party to those persons identified by the Interested Party as being its clients or experts in the matter, which shall also include such clients' or experts' administrative assistants, clerical staff, and persons employed by the client or expert, to the extent necessary for performance of work on this matter. However, the Interested Party is prohibited from disclosing Confidential Information to persons, clients, or experts who have competitive job functions or business interests that would permit the use of Confidential Information to the competitive disadvantage of the party providing the Confidential Information. Any member of the Public Service Commission and its staff, the Division and its staff, the Committee and its staff, and their counsel, under and pursuant to the applicable provisions of the 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 person

DOCKET NO. 07-999-03

-4-

being required to disclose Confidential Information shall promptly and no later than three business days after such demand give prior notice by telephone and written notice of such requirement of disclosure by facsimile and overnight mail addressed to the person that provided such Confidential Information and to the attorneys of record for such person, so that the person that provided the Confidential Information may seek an appropriate protective order. The person being required to disclose the Confidential Information will cooperate with the person 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 client, expert, or any other person access to Confidential Information, as contemplated in paragraph 1(B) above, the Interested Party 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, mailing address and employer, and the name of the party with whom the signatory is associated. Such executed Appendix A shall be delivered to the Commission and a copy shall be delivered to the designated representative for the providing party prior to the person 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

DOCKET NO. 07-999-03

-5-

warranted for certain confidential material because it contains highly sensitive documents and information or because it has reason to believe that an Interested Party who is on the Commission's Service List or other person may use the Confidential Information for an improper competitive purpose (a "Competing Interest"). In such case, the provider shall identify such documents and information, or potential Competing Interests, and shall inform the Commission of the claimed highly sensitive nature or the potential Competing Interests prior to filing the application for a waiver, or if an application has already been filed, as soon thereafter as possible, and shall 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 of the Confidential Information 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. An Interested Party who would otherwise receive the documents and information or authorize access to them 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 Confidential Information. Disputes between the parties shall be resolved promptly 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.

DOCKET NO. 07-999-03

-6-

(B) In the event that the parties subject to this Order 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 or person has 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 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 to a proceeding pursuant to §54-17-501 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

DOCKET NO. 07-999-03

-7-

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 be effective after entry of the Order.

3. (A) Receipt into Evidence. Provision is hereby made for receipt of evidence in a proceeding under seal. 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 Confidential 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 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.

DOCKET NO. 07-999-03

-8-

(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 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 by the Commission, all 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 for a party who is provided access may retain one copy of the Confidential Information for their own files. An independent evaluator (if one is participating), who is accorded access to Confidential Information pursuant to this Order, shall provide to counsel for the affected electrical utility, the independent evaluator's notes, work papers or other documents pertaining or relating to any Confidential Information, which information shall be retained by the affected electric

utility for at least ten years. An person who is accorded access to Confidential Information pursuant to this Order, shall provide to counsel for the party on whose behalf the person was retained or employed, the person's notes, work papers or other documents pertaining or relating to any Confidential Information. Counsel shall retain these 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 recipient of Confidential Material may release or disclose Confidential Information obtained in a matter to other parties in subsequent Commission dockets or proceedings that are related to the electrical utility's request for waiver pursuant to §54-17-501, pursuant to the terms of applicable protective orders issued in such other subsequent Commission dockets or proceedings, and subject to the other terms of this Order.

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 or who are exempted from such as provided in this Order. 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 any

DOCKET NO. 07-999-03

-10-

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 or who are exempted from such as provided by this Order. Other parties or their representatives 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 a competitive purpose, or any other purpose, other than the purposes of preparation for and conduct of a proceeding pursuant to §54-17-501, or any subsequent related proceeding, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure in accordance with the purpose and intent of this Order.

DOCKET NO. 07-999-03

-11-

8. Identification of Competing Interest.

(A) Prefiling Notice. Prior to filing a request for waiver pursuant to §54-17-501, the affected electric utility shall, no later than 4 business days prior to filing its request, file with the Commission and serve upon the persons or entities identified on the Service List a prefiling notice of intent to file a request for waiver pursuant to §54-17-501, and identify the nature and basis for seeking a waiver, sufficient to allow an Interested Party or their clients or principals to identify whether they may have a potential Competing Interest. As part of the prefiling notice, the affected electrical utility may also schedule a prefiling conference by providing notice to all persons or entities on the Service List. Such conference shall be conducted either in person, by

telephone, or by some other means so that persons or entities on the Service List can participate, either directly or through a designated representative, in such prefiling conference.

(B) Prefiling Conference. At a prefiling conference, the affected electrical utility shall inform each participant of the general nature of the request for waiver and shall identify the basis for seeking a waiver, and discuss questions participants may have regarding the identity of the resource that is the subject of the request for waiver, sufficient to allow the participants to identify whether they or their clients or principals may have a potential Competing Interest. Such information 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. As soon as practicable after receipt of the Prefiling Notice, each Interested Party shall, notify the affected electric utility and the Commission, in

DOCKET NO. 07-999-03

-12-

writing, whether the Interested Party, clients or principals does or does not have a Competing Interest. The Commission shall forward a copy of the complete Application, including Confidential Information, to those on the Service List from whom it has received an affirmative representation that they or their clients or principals do not have and will not use Confidential Information a Competing Interest, as defined in section 1 (D) of this Order. The Commission shall forward the Application, without Confidential Information, to those on the Service List who indicate that they have a Competing Interest. Furthermore, if the affected electrical utility reasonably believes that, after filing its prefiling notice of intent or after conducting the prefiling

conference, there are certain Interested Parties or clients or principals who may have a Competing Interest, then the affected electric utility may request additional protective measures from the Commission prior to filing 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.

DOCKET NO. 07-999-03

-13-

DATED at Salt Lake City, Utah, this 17th day of April, 2007.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#53108

DOCKET NO. 07-999-03

-14-

APPENDIX A

**Generic Protective Order for an
Application for a Waiver Pursuant to §54-17-501**

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.

Signature

Name (Type or Print)

Personal Address

Employer or Firm

Business Mailing Address

Party Represented

Date Signed