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ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF THE INSTITUTION OF)
A RULEMAKING TO ADOPT AMENDMENTS)
TO THE COMMISSION'S RULES ON)
CONSERVATION & ENERGY EFFICIENCY)
TO ALLOW SELF-DIRECTED PROGRAMS)
FOR LARGE CUSTOMERS)

DOCKET NO. 10-101-R
ORDER NO. 11

INTERIM PROTECTIVE ORDER

By Order No. 10 issued in this docket on August 23, 2011, the Arkansas Public Service Commission ("Commission") adopted amendments to the Commission's *Rules for Conservation and Energy Efficiency Programs* ("C&EE Rules") to allow large Commercial and Industrial Customers ("C&I Customers") of Arkansas's electric and natural gas public utilities to apply for an Energy Efficiency Programs Self-Direct Option ("S-D Option") Certification. Also, in response to concerns expressed by the Attorney General of Arkansas ("AG"), the Commission established the following additional Interim Protective Order ("IPO") procedures governing the filing or submission by C&I Customers of customer-specific proprietary information in support of their applications for S-D Option Certification. Specifically, the Commission ruled as follows:

Consistent with the Commission's long-standing practice, and the provisions of Ark. Code Ann. § 23-2-316, and Rule 3.07(a) of the RPP, all customer-specific information, proprietary facts and trade secrets submitted by an applicant for S-D Option certification shall be protected as Highly Sensitive Protected Information ("HSPI). Solely for the purpose of SD dockets HSPI is defined as follows:

Highly Sensitive Protected Information is defined as: Proprietary Documents or information that are commercially sensitive in the competitive market in which the Applicant is engaged and that if improperly disclosed would expose the Applicant to an unreasonable risk of harm, including but not limited to: (1) customer-specific information; (2) trade secrets; (3) confidential information pertaining to contracts

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that specify that their terms are confidential or which are confidential pursuant to an order entered in litigation to which the Applicant is a party; and (4) business operations or financial, cost or modeling information.

By subsequent order the Commission will issue in this docket a standard form Interim Protective Order and additional guidance to be applicable to all SD dockets.

Order No. 10, Ordering ¶ 24(e) at 56. Accordingly, the Commission hereby issues this IPO for the purpose of protecting C&I Customers' HSPI from improper public disclosure.

Authorities and Discussion

The issuance of an IPO by this Commission is governed by Ark. Code Ann. § 23-2-316 and Rule 13.05 of the Commission's *Rules of Practice and Procedure* ("RPP"). Ark. Code Ann. §23-2-316(b) provides as follows:

(b)(1) Whenever the commission determines it to be necessary in the interest of the public or, as to proprietary facts or trade secrets, in the interest of the utility to withhold such facts and information from the public, the commission shall do so.

(2) The commission may take such action in the nature of, but not limited to, issuing protective orders, temporarily or permanently sealing records, or making other appropriate orders to prevent or otherwise limit public disclosure of facts and information.

Rule 13.05(b), in part, provides as follows:

(b) Grounds for Entering a Protective Order

A party seeking a protective order (movant) shall bear the burden of establishing by a preponderance of the evidence that disclosure of the information would have one or more of the following consequences:

(1) The movant could suffer material damage to its competitive or financial position;

(2) A trade secret of the movant would be revealed;

- (3) The public interest would be impaired by release of the information;
- (4) The information has no relevance to deciding the issues in the case at hand.

When considering a request for the entry of a protective order of non-disclosure, the Commission must carefully balance three competing needs, i.e., (1) a C&I Customer's need to protect from public disclosure its proprietary facts or trade secrets, (2) the Commission's investigative need to acquire information from the C&I Customer in an expeditious and efficient manner, and (3) the public's right of access to information in the possession of the Commission.

The entry of an IPO, which allows the General Staff ("Staff") of the Commission and Intervenors the right to contest at a future date a C&I Customer's continuing entitlement to protection under this IPO, efficiently addresses the first two needs. To protect the public's right of access to the maximum extent possible the Commission directs that C&I Customers shall hold to an absolute minimum the amount of information to be protected from public disclosure pursuant to this IPO.

Findings and Directives

Accordingly, the Commission finds, orders and directs as follows:

1. Consistent with the Commission's long-standing precedent of protecting customer-specific information, including proprietary facts and trade secrets, from public disclosure, the Commission finds that public disclosure of a C&I Customer's HSPI could cause such customer to suffer material damage to its competitive or financial position and could reveal a C&I Customer's trade secrets. Therefore, the

- Commission finds that the public disclosure of such HSPI would impair the public interest. Therefore, a C&I Customer's HSPI should and shall be protected from public disclosure on an interim basis pursuant to Ark. Code Ann. §23-2-316 and Rule 13.05 of the RPP;
2. To protect the public's right of access to the maximum extent possible, the C&I Customer shall hold to an absolute minimum the amount of HSPI to be protected from public disclosure;
 3. For each specific item of HSPI to be filed or submitted in this Docket by the C&I Customer, the C&I Customer shall affix thereto a written transmittal cover document in the form of Attachment 1 hereto containing, but not limited to, the following information: (a) a description of each item of HSPI; (b) a description of the document containing the HSPI; and (c) for each item of HSPI an explanation of how public disclosure of such item would cause the C&I Customer to suffer material damage to its competitive or financial position;
 4. Access to HSPI by an official party to this docket shall be restricted to its counsel of record in this docket and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the official party and who are immediately and directly working on matters relating to this docket on behalf of such official party;
 5. Access to HSPI by an official party to this docket, other than the Staff and the Attorney General of Arkansas, shall further be restricted to

those representatives specifically identified in ¶ 4 above who are not themselves and who do not represent others who are participants in the competitive business of the C&I Customer. To be granted access to HSPI all reviewing representatives must additionally certify to the C&I Customer that they are not themselves participants in the competitive business of the C&I Customer nor do they represent others who are participants in the competitive business of the C&I Customer;

6. HSPI to be provided in paper format shall be reproduced and filed or submitted on distinctive pink paper only. HSPI to be provided in digital format shall be reproduced and filed or submitted on a CD that is distinctively red or pink in color;
7. HSPI to be provided via electronic mail shall note that it is protected in the subject line and body of the electronic mail. For any attached files, the file name shall include the word "PROTECTED" or "CONFIDENTIAL";
8. The Commission's standard form "AFFIDAVIT OF NON-DISCLOSURE" (Attachment 2 hereto) shall be executed and filed in this docket by all official party representatives to be granted access to said HSPI pursuant to this IPO;¹
9. All official parties are hereby granted the right to contest at a future date, upon reasonable notice, a C&I Customer's continuing entitlement

¹ A digital copy of Attachments 1 and 2 to this Order can be accessed through the Commission's web site at the following internet address: <http://www.apscservices.info/orderattach.asp> . The digital copies can be filed in online and then printed for signature and filing. The standard form Attachments 1 and 2 shall not be modified or amended in any way.

to protect from public disclosure all or any portions of any HSPI filed or submitted pursuant to this IPO. Such HSPI shall be reviewed by the official parties for the express purpose of ascertaining (1) whether such HSPI is consistent with the proprietary information transmittal cover document required by ¶ 3 above; (2) whether such proprietary information meets the definition of HSPI as stated above; and (3) whether the scope of this IPO has been applied too broadly by the C&I Customer. Based upon such review any official party shall promptly file an objection in this Docket if such party determines that any portion of such proprietary information should be removed from the scope of this IPO;

10. Further, if any official party determines that any information previously deemed to be confidential should no longer be protected from public disclosure due to the passage of time or changed circumstances, such party shall promptly file an appropriate objection in this Docket;
11. In the event of any objection filed pursuant to the terms and conditions of this IPO, the burden of proof will rest on the C&I Customer; and
12. The Commission hereby designates Commission Administrative Law Judge ("ALJ") Susan D'Auteuil to review and examine all HSPI information filed or submitted pursuant to this IPO and to rule upon any objections filed pursuant to the terms and conditions of this IPO. Based upon such examination the ALJ shall issue an appropriate

amended IPO if required. Further, after notice to the parties and after any hearing that may be necessary, the ALJ shall issue an appropriate Final Protective Order as may be needed. Any party aggrieved by any amended IPO or the Final Protective Order issued by the ALJ may petition the Commission for review and rehearing of such Order within thirty (30) days of the issuance of same.

13. In conjunction with the filing of its S-D Option application a C&I Customer shall simultaneously cause such HSPI to be filed and/or otherwise submitted under seal pursuant to the terms of this IPO.

BY ORDER OF THE COMMISSION,

This 8th day of September, 2011.

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by electronic mail, using the email address of each party as indicated in the official docket file.

KS
Secretary of the Commission
Date 09-08-2011

Colette D. Honorable, Chairman

Olan W. Reeves, Commissioner

Elana C. Wills, Commissioner

Karen Shook (Acting)
Jan Sanders, Secretary of the Commission

(COMMERCIAL & INDUSTRIAL CUSTOMER NAME)
ARKANSAS PUBLIC SERVICE COMMISSION
DOCKET NO. xx-xxx-SD

DATE REQUESTED: MONTH, DAY, YEAR DATE PROVIDED: MONTH, DAY, YEAR

DATA REQUEST #: REQUESTING PARTY:

COMPANY CONTACT:
NAME
PHONE, EMAIL

CONFIDENTIAL INFORMATION COVER SHEET

Requested Information	Company's Response
1. Document Title	
2. Description of the document containing Highly Sensitive Protected Information (HSPI)	
3. Identification of each item of HSPI contained in the document	
4. A description of why each item of HSPI identified above is claimed by the Commercial & Industrial Customer (C&I Customer) to be HSPI and how such specific item fits within the Commission's definition of HSPI as set forth in the generic Interim Protective Order (IPO) No. 11 filed in Docket No. 10-101-R	
5. Has the HSPI been previously disclosed? If so, when and in what context?	
6. What is the period of time that the HSPI should remain confidential?	
7. Have both a redacted and non-redacted version of the document containing the HSPI been provided?	

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE INSTITUTION OF)
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DOCKET NO. 10-101-R

AFFIDAVIT OF NON-DISCLOSURE
PURSUANT TO INTERIM PROTECTIVE ORDER NO. 11

STATE OF _____)
COUNTY OF _____)

I, _____, am immediately and directly working on matters relating to the above referenced docket on behalf of _____.

The above referenced Interim Protective Order directs that the confidential information identified therein shall be protected from public disclosure pursuant to the provisions of Ark. Code Ann. § 23-2-316 and Rule 13.05 of the Arkansas Public Service Commission's *Rules of Practice and Procedure* ("Rule 13.05").

In accordance with said Interim Protective Order, I understand, agree and certify as follows:

1. That said confidential information is provided to me by the protected party pursuant to the terms of said Interim Protective Order and the provisions of Rule 13.05; that I have been provided a copy of said Interim Protective Order and Rule 13.05, and that I have read and understand the provisions of said Interim Protective Order and Rule 13.05; and that I shall fully comply with same; and

2. That said confidential information at all times shall be clearly and distinctly marked as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" and at all times shall be maintained in a secure manner; and

3. That I shall not disclose said confidential information to any person not immediately and directly involved in the above-referenced docket, nor to any person not entitled to said confidential information by the terms of said Interim Protective Order and Rule 13.05, nor to any person who has not executed the required Affidavit of Non-Disclosure; and

4. That said confidential information shall be used solely for the purpose of pursuing the case at hand, and shall not be used for any other purpose(s) whatsoever, and most especially shall not be used for competitive business purposes; and

5. That improper disclosure of said confidential information by a party or person may result in civil liabilities or sanctions against said party or person; and

6. That I shall neither disclose nor permit to be reviewed or copied said confidential information, and any notes, memoranda, or any other form of information regarding or derived from said confidential information, by any person other than myself or other individuals who are entitled to said confidential information by the terms of said Interim Protective Order and Rule 13.05 and who have also executed the required Affidavit of Non-Disclosure; and

7. That said confidential information shall not lose its confidential status through use in this docket and that I will take all steps reasonably required to protect its confidentiality during such use; and

8. That if I have knowledge that said confidential information has been disclosed, reviewed or copied by any persons other than in the manner authorized by the

Interim Protective Order, Rule 13.05, and this Affidavit of Non-Disclosure, I shall promptly notify counsel for the protected party and make every reasonable effort to retrieve such confidential materials and to prevent further disclosure of such information; and

9. That any pleadings or other filings that incorporate, reference, or attach said confidential information shall be filed in two formats: (a) public format with said confidential information appropriately redacted, and (b) non-public under protective seal format; and

10. That neither the filing in this docket of said confidential information, nor the furnishing of said confidential information for review by the parties to this docket shall be considered a waiver of any right to object upon any grounds to the use or introduction into evidence of said confidential information during any proceeding in this docket; and

11. That, I shall return said confidential information to the protected party within thirty (30) days of the conclusion of the above referenced docket and any appeals taken therefrom. Further, I shall destroy any notes, memoranda, or any other form of information regarding or derived from said confidential information within thirty (30) days of the conclusion of said docket and any appeals taken therefrom.

12. That, if the Interim Protective Order identified hereinabove subsequently is amended and/or further Interim or Final Protective Orders are entered in this Docket, I shall be bound by the same terms herein as they relate to any additional Confidential Information which may be protected by such subsequent Protective Orders without the need for the execution of further affidavits of non-disclosure in this Docket.

AFFIANT CERTIFICATION

Dated this _____ day of _____, 200__.

Signature of Affiant

Print name of Affiant

NOTARY CERTIFICATION

Subscribed and sworn to by the foregoing Affiant before me, a Notary Public, on this
_____ day of _____, 200__.

Notary Public

My Commission Expires: _____

Affix Notary Seal: