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ARKANSAS PUBLIC SERVICE COMMISSION

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IN THE MATTER OF THE CONTINUATION,)
EXPANSION, AND ENHANCEMENT OF)
PUBLIC UTILITY ENERGY EFFICIENCY)
PROGRAMS IN ARKANSAS)

DOCKET NO. 13-002-U
ORDER NO. 9

ORDER

On October 21, 2013, the following parties (collectively referred to as the "Parties Working Collaboratively," or the "PWC") submitted a *Motion for Interim Protective Order* ("Motion"): the General Staff ("Staff") of the Arkansas Public Service Commission ("Commission"), the Arkansas Attorney General (the "AG"), Entergy Arkansas, Inc. ("EAI"), Southwestern Electric Power Company ("SWEPCO"), Oklahoma Gas and Electric Company ("OG&E"), The Empire District Electric Company ("Empire"), CenterPoint Energy Arkansas Gas ("CenterPoint"), SourceGas Arkansas, Inc. ("SourceGas"), Arkansas Oklahoma Gas Corporation ("AOG"), Arkansas Community Action Agencies Association ("ACAAA"), Audubon Arkansas ("Audubon"), Arkansas Advanced Energy Association, Inc. ("AAEA"), Sierra Club, and Arkansas Electric Energy Consumers and Arkansas Gas Consumers ("AEEC/AGC"). On October 25, 2013, the PWC submitted a modified Motion. Hereinafter, this Order references the Motion, as so modified.

The PWC note that the PWC filed a *Joint Motion to Request a Potential Study* on April 19, 2013, which the Commission granted on September 9, 2013 by Order No. 7. Motion at ¶¶ 2 and 3. The PWC state that Order No. 7 required the PWC to develop and submit on or before November 1, 2013 a Request for Proposal ("RFP") for the performance of an Arkansas energy efficiency ("EE") Potential Study in order to assist

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the Commission in determining appropriate energy savings targets for Arkansas public utilities.¹ *Id.* at ¶ 3. The PWC assert that certain information that will be included in the November 1, 2013 responsive filing is commercially sensitive data that will, if disclosed, impair competitive bidding for the performance of the Potential Study, thereby harming the competitive and financial positions of utilities and their ratepayers. *Id.* at ¶¶ 4 and 6. The PWC request that the following Confidential Information be protected: all budget and financial data related to the anticipated cost of the Potential Study and the hiring of facilitators and/or technical experts for the unified weatherization program and a standardized commercial and industrial program, whether in the aggregate or utility specific; and any estimates or statements of any dollar amounts related to the anticipated range of cost estimates related to potential bidders. *Id.* at ¶ 5.

The PWC therefore request that the above-described information be subject to an Interim Protective Order (“IPO”) under Arkansas Code Annotated § 23-3-316 and Rules 3.07 (a) and 13.05; that access to such information be restricted to counsel and other agents or employees who have been specifically assigned to this proceeding by one of the parties and who have signed an Affidavit of Non-Disclosure; that the information be used solely in connection with this proceeding; that protected information used in depositions, prepared testimony or otherwise, will be redacted and submitted under seal; that all information to be covered by the provisions of the order should be marked “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 13-002-U” prior to delivery; that neither the furnishing of Confidential Information nor its

¹ The Commission notes that Order No. 7 also indicated that the Potential Study should serve not only the purpose of estimating maximum achievable potential, but also of helping inform program and portfolio design, thereby laying the groundwork to maximize the achievement of cost-effective EE potential. Order No. 7 at 20.

availability for review by the parties shall be considered a waiver of any right to object upon any ground to the use or introduction into evidence of any such information during any proceeding; and, not later than thirty (30) days following the conclusion of this proceeding, by the issuance of a final, non-appealable Order of this Commission, all documents and software designated as "CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 13-002-U," including all photocopies, in whole or part thereof, or any information therein however made, should be returned to the party providing the information. *Id.* at ¶ 8. The PWC reserve the right to seek additional protective orders if necessary and state that, should any party ask the Commission to release from protective seal any information that the parties believe is not entitled to continued protection, the PWC and/or the individual PWC members who wish to support continued protection will bear the burden of establishing that such information should continue to be protected in accordance with Arkansas Code Annotated § 23-2-316 and Rules 3.07(a) and 13.05. *Id.* at ¶¶ 10 and 11.

Discussion

Arkansas Code Annotated §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.

When considering a request for the entry of a protective order of non-disclosure, the Commission must carefully balance three competing needs: (1) the need to protect

from public disclosure proprietary facts or trade secrets; (2) the Commission's investigative need to acquire information 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 parties the right to contest at a future date the continuing need for a protective order efficiently addresses the first two needs. To protect the public's right of access to the maximum extent possible the Commission directs that the PWC hold to an absolute minimum the amount of information to be protected from public disclosure.

Findings and Rulings

Based upon the representations of the PWC, upon the reasonable need to protect information that could impair the competitive bidding process for the Potential Study, and upon the lack of objection by any party, the Motion is granted, provided that:

1. To protect the public's right of access to the maximum extent possible, the PWC shall hold to an absolute minimum the amount of data to be protected from public disclosure;

2. For each specific item of Confidential Information to be filed or submitted in this Docket, the PWC shall affix thereto a written Confidential Information Cover Sheet in the form of Attachment 1a hereto providing detailed and complete responses to the information required thereby;

3. As to confidential information covered by the scope of this order the authorized reviewing representatives of an official party to this docket shall include 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 the above referenced docket on behalf of such official party;

4. In the event that a reviewing representative ceases to be engaged in this docket, access to protected materials by such person shall be terminated and the reviewing representative shall return or destroy all copies of such protected information made available to him or her;

5. Confidential Information to be provided in paper format shall be reproduced and filed or submitted on distinctive pink paper only. Confidential Information to be provided in digital format shall be reproduced and filed or submitted on a CD that is distinctively red or pink in color;

6. 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 Confidential Information pursuant to this IPO;²

7. All official parties are hereby granted the right to contest at a future date, upon reasonable notice, the continuing protection from public disclosure all or any portions of any Confidential Information filed or submitted pursuant to this IPO. Such Confidential Information shall be reviewed by the official parties for the express purpose of ascertaining: (1) whether such Confidential Information, is consistent with the description provided in the Motion; (2) whether such Confidential Information is

² A digital copy of the Attachments 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 filled in online and then printed for signature and filing. The standard form Attachments shall not be modified or amended in any way.

consistent with the Confidential Information transmittal cover document; and (3) whether the scope of this IPO has been applied too broadly. Based upon such review any official party shall promptly file an objection in this Docket if such party determines that any portion of such Confidential Information should be removed from the scope of this IPO;

8. 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;

9. In the event of any objection filed pursuant to the terms and conditions of this IPO, the burden of proof will rest on the Company;

10. The Commission hereby designates Commission Administrative Law Judge (ALJ) Susan D'Auteuil to review and examine all Confidential 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 by 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;

11. Accordingly, the PWC's Motion, as conditioned herein, is granted on an interim basis. The PWC shall forthwith cause said Confidential Information to be filed and/or otherwise submitted under seal as requested.

BY ORDER OF THE COMMISSION,

This ____ day of October, 2013.

I hereby certify that this order, issued by the Arkansas Public Service Commission, has been served on all parties of record on this date by the following method:

U.S. mail with postage prepaid using the mailing address of each party as indicated in the official docket file, or
 Electronic mail using the email address of each party as indicated in the official docket file.



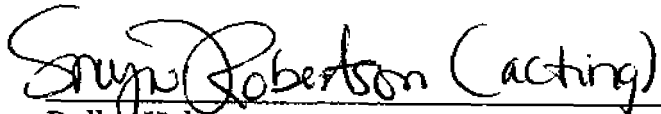
Colette D. Honorable, Chairman



Olan W. Reeves, Commissioner



Elana C. Wills, Commissioner



Dallas Heltz,
Acting Secretary of the Commission

ARKANSAS PUBLIC SERVICE COMMISSION
DOCKET NO. 13-002-U

DATE REQUESTED:
 (mm/dd/yyyy)
DATA REQUEST NO.: APSC-

DATE PROVIDED:
 (mm/dd/yyyy)
COMPANY CONTACT:
NAME:
PHONE:
EMAIL:

CONFIDENTIAL INFORMATION COVER SHEET

Requested Information	Company's Response
1. Document Title	
2. Description of the document containing the Confidential Information	
3. Identification of each item of Confidential Information contained in the document	
4. The applicable category of Confidential Information listed in the IPO under which each item of the Confidential Information falls	
5. A description of why the Confidential Information within the document should be protected including the Company's reasons for claiming that each item of the Confidential Information is consistent with the description provided by the Company in its request for an IPO	
6. Has the Confidential Information been previously disclosed? If so, when and in what context?	
7. What is the period of time that the Confidential Information should remain confidential?	
8. Have both a redacted and non-redacted version of the document containing the Confidential Information been provided?	

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE CONTINUATION,)
EXPANSION, AND ENHANCEMENT OF PUBLIC)
UTILITY ENERGY EFFICIENCY PROGRAMS IN) DOCKET NO. 13-002-U
ARKANSAS)
)
)

AFFIDAVIT OF NON-DISCLOSURE
PURSUANT TO INTERIM PROTECTIVE ORDER NO. 9

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.

Dated this _____ day of _____, 20____.

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 _____, 20____.

Notary Public
My Commission Expires: _____

Affix Notary Seal: