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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In re Application No. 96-1
of
OLYMPIC PIPELINE COMPANY
For Site Certification

PREHEARING ORDER NO. 23
COUNCIL ORDER NO. 724

STIPULATED PROTECTIVE ORDER

WHEREAS, Tidewater Barge Lines and Tidewater Terminal Company (Tidewater) may disclose certain documents, things and information that constitute or contain trade secrets or other secret, proprietary or confidential research, development, or commercial or business information within the meaning of Rule 26(c) of the Superior Court Civil Rules (CR); and

WHEREAS, Tidewater and Olympic Pipeline Company (Olympic) agree that access to and use of such documents, things and information shall be governed and limited by the provisions of a Protective Order under the terms set forth herein;

IT IS HEREBY STIPULATED AND AGREED by and between Tidewater and Olympic by their undersigned counsel, subject to the approval of EFSEC that:

1. "Information," as used herein, means any type of business, scientific, regulatory or other information, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise.

1 2. "Confidential Information," as used herein, means any type of classification of
2 information which has been or will be designated as "Confidential" by Tidewater, whether it be a
3 document, information contained in a document, information revealed during a deposition,
4 information revealed in an interrogatory answer, or otherwise. In designating information as
5 "Confidential," Tidewater will make such designation only as to that information, which it
6 believes, contains Confidential Information.

7 3. "Restricted Confidential Information," as used herein, means any information that has
8 been or will be designated "Restricted Confidential" by Tidewater, whether it be a document,
9 information contained in a document, information revealed during a deposition, information
10 revealed in an interrogatory answer, or otherwise. In designating information as "Restricted
11 Confidential," Tidewater will make such designation only as to that information which it believes
12 contains Confidential Information of such a current highly sensitive, proprietary or confidential
13 nature that access to that information should be limited to "Restricted Qualified Persons" as
14 identified in Paragraph 4(a)

15 4. For purposes of this Protective Order, "Qualified Person," as used herein, means all
16 "Restricted Qualified Persons" as defined in sub-paragraph 4(a) and all "Non-Restricted
17 Qualified Persons" as defined in sub-paragraph 4(b):

18 a) "Restricted Qualified Persons", as used herein, means:

19 (1) Outside trial attorneys for Olympic and members and employees of
20 their respective firms to whom it is necessary that the material be disclosed. Upon execution of
21 this Protective Order, Olympic shall submit a list its trial attorneys, and the firm for which each
22 attorney works, to Tidewater. If Olympic wishes to add or substitute an outside trial attorney or
23 attorneys other than those retained by Olympic on the date this Protective Order is entered, or if
24 any retained attorney changes firms, the name, address, firm (if applicable) and title of such
25 outside trial attorney or attorneys shall be disclosed in writing to Tidewater at least three (3)
26 business days prior to the disclosure of any "Confidential Information" or "Restricted
Confidential Information" to any such person. Such disclosure shall not be made if written
notice of objection is served within three (3) days of the receipt of such written notification, but

1 the party seeking disclosure shall have the right to bring the dispute before EFSEC for its
2 resolution if it cannot be resolved between counsel for Tidewater and Olympic.

3 (2) Independent experts or consultants, not employed by or affiliated with
4 Olympic, retained to assist the outside attorneys for Olympic in evaluating the information, such
5 as independent accountants, statisticians, economists, investigators or other technical or legal
6 experts or consultants, who have signed an acknowledgment in the form of Exhibit A attached
7 hereto.

8 (3) Stenographic reporters at depositions taken in this action.

9 b) "Non-Restricted Qualified Persons," as used herein, means:

10 (1) All "Restricted Qualified Persons," as defined in sub-paragraph 4(a).

11 (2) Officers or employees of Olympic who are so designated by Olympic
12 who are assisting in this matter, and who have signed an acknowledgment in the form of Exhibit
13 A attached hereto. If Olympic wishes to add or substitute an officer and/or employee other than
14 those previously designated as witnesses, the name, address and title of such officer and/or
15 employee shall be disclosed in writing to Tidewater at least three (3) business days prior to the
16 disclosure of any "Confidential Information" to any such person. Such disclosure shall not be
17 made if written notice of objection is served within three (3) days of the receipt of such written
18 notification, but the party seeking disclosure shall have the right to bring the dispute before
19 EFSEC for its resolution if it cannot be resolved between counsel for Tidewater and Olympic.

20 5. Disclosure of all items designated as "Confidential Information" or "Restricted
21 Confidential Information" shall be solely for the purpose of this action, and the information thus
22 disclosed shall not be used for any other purpose.

23 6. Any information designated as "Restricted Confidential Information" shall not be
24 made available or disclosed to any person(s) other than the "Restricted Qualified Persons"
25 identified in Paragraph 4(a). Any information designated as "Confidential Information" shall not
26 be made available or disclosed to any person(s) other than the "Non-Restricted Qualified
Persons" identified in Paragraph 4(b). Persons who have knowledge of any designated
"Confidential Information" or "Restricted Confidential Information" shall not suffer or permit its

disclosure or that of any information obtained, derived, compiled, or ascertained therefrom, to any person or persons not entitled under this Protective Order to receive such information.

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2 7. With respect to information designated “Confidential Information,” no copies of
3 documents, testimony, or other information shall be made, received, kept, or maintained by
4 individuals other than “Qualified Persons” as defined in Paragraph 4. With respect to
5 information designated “Restricted Confidential Information,” no copies of documents,
6 testimony, or other information shall be made, received, kept, or maintained by individuals other
7 than “Restricted Qualified Persons” as defined in Paragraph 4(a).

8 8. “Confidential Information” shall include all information provided by Tidewater which
9 have been designated as confidential by marking all pages thereof “Confidential” or
10 “Confidential Information.” “Restricted Confidential Information” shall include all information
11 provided by Tidewater which have been designated as restricted confidential by marking all
12 pages thereof “Restricted Confidential” or “Restricted Confidential Information.” In lieu of
13 marking the originals of documents, Tidewater may mark the copies that are produced or
14 exchanged.

15 9. The identification of information as “Confidential Information” or “Restricted
16 Confidential Information” shall be made at a time when an answer to an interrogatory is served,
17 when a copy of a document is provided to Olympic, and when an inspection of premises or
18 tangible things is made. Information disclosed at a deposition may be designated as
19 “Confidential” or “Restricted Confidential” by either (a) indicating on the record at the
20 deposition that the testimony is “Confidential Information” or “Restricted Confidential
21 Information” and subject to the provisions of this Protective Order or (b) by notifying the
22 opposing party in writing within thirty (30) calendar days of the receipt of the transcript of those
23 pages and lines that are “Confidential” or “Restricted Confidential.” No deposition may be read
24 by anyone other than “Restricted Qualified Persons” and the deponent during said thirty (30) day
25 period. Upon being informed that certain portions of a deposition disclose “Confidential
26 Information” or “Restricted Confidential Information,” each party must cause each copy in its
custody or control to be so marked immediately.

10. The inadvertent failure to designate information as “Confidential Information,” or “Restricted Confidential Information” prior to or at the time of disclosure shall not operate as a waiver of Tidewater’s right to designate said information as “Confidential Information” or “Restricted Confidential Information” subsequent to such disclosure. In the event that “Confidential Information” or “Restricted Confidential Information” is designated as such after disclosure, Olympic shall employ reasonable efforts to ensure that such disclosed information is subsequently treated as “Confidential Information” or “Restricted Confidential Information” pursuant to the terms of this Protective Order.

11. Any court reporter who records testimony in this action at a deposition shall be provided with a copy of this Protective Order by attorneys for Olympic. Attorneys for Olympic shall advise the court reporter, before any testimony is taken, that all documents, information, or testimony designated “Confidential” or “Restricted Confidential” are and shall remain confidential and shall not be disclosed except as provided in this Protective Order. Attorneys for Olympic shall further advise the court reporter that copies of all transcripts, reporting notes and all other records of any such testimony must be treated in accordance with this Protective Order, delivered to attorneys of record, or filed under seal with EFSEC.

12. Any document, answer to interrogatory or answer to a request for production, and deposition transcript filed with EFSEC for any purpose and identified as containing “Confidential Information” or “Restricted Confidential Information,” or any pleading, motion or brief filed with EFSEC containing or disclosing “Confidential Information” or “Restricted Confidential Information” shall be filed with EFSEC in a sealed, opaque container including on the outside thereof the case heading of this proceeding and a notification that the contents are subject to a protective order and the container is not to be opened except upon further order of EFSEC. Such notification shall be substantially in the following form:

“CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER
This envelope (or container) containing the
above identified papers filed by (name of party),
is not to be opened or the contents thereof
displayed or revealed except by EFSEC order
or by agreement of the parties.”

5 - STIPULATED PROTECTIVE ORDER

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
Pacwest Center, Suites 1600-1800
1211 S.W. Fifth Avenue
Portland, OR 97204-3795
Telephone (503) 222-9981

EFSEC staff is directed to maintain under seal all documents and transcripts of deposition testimony so filed.

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2 13. Any party disagreeing with the designation of any document or information as
3 “Confidential Information” or “Restricted Confidential Information” shall so notify Tidewater in
4 writing. Tidewater shall then have a period of fourteen (14) days from the date of receipt of such
5 notice to: (1) advise the receiving party whether or not the disclosing party persists in such
6 designation; and (2) if Tidewater persists in the designation, to explain the reasons for the
7 particular designation. The receiving party may then, after advising Tidewater, move EFSEC for
8 an order removing the “Confidential” or “Restricted Confidential” designation. Information
9 designated “Confidential” or “Restricted Confidential” received from Tidewater shall be treated
10 as such by all parties unless otherwise agreed to by Tidewater or otherwise ordered by EFSEC or
11 by any appellate court, should appellate review be sought.

12 14. If any party in this proceeding, or its attorney, desires to give, show, make available
13 or communicate any document or information designated “Confidential” to a person who is not a
14 “Qualified Person”, or desires to give, show, make available or communicate any document or
15 information designated “Restricted Confidential” to a person who is not a “Restricted Qualified
16 Person,” the party or its attorney must first disclose that person’s name and connection with this
17 proceeding to Tidewater, and must obtain Tidewater’s written consent. If Tidewater refuses to
18 give its consent, the parties shall confer to attempt to resolve the reasons for withholding consent.
19 If an agreement cannot be reached, the party desiring disclosure of the confidential document or
20 information may petition EFSEC for an order granting disclosure to the person in question.

21 15. Nothing in this Protective Order shall prohibit any party from eliciting testimony on
22 the record during the adjudicative hearings that contains or reveals “Confidential Information” or
23 “Restricted Confidential Information.” If and when any question posed to a witness on the
24 record in open court calls for the disclosure of “Confidential Information” or “Restricted
25 Confidential Information,” Tidewater shall immediately notify the presiding officer and the
26 parties of its assertion that a particular question or line of questioning calls for disclosure of
“Confidential Information” or “Restricted Confidential Information.” Immediately after

1 Tidewater asserts that a particular question or line of questioning calls for disclosure of
2 “Confidential Information” or “Restricted Confidential Information,” any party that disagrees
3 with such assertion shall object thereto. If no disagreement is raised, or if EFSEC concludes that
4 the question or line of questioning calls for the disclosure of “Confidential Information” or
5 “Restricted Confidential Information,” EFSEC shall order the hearing room cleared of all persons
6 except for (a) Qualified Persons, when testimony will disclose “Confidential Information,” and
7 (b) Restricted Qualified Persons, when testimony will disclose “Restricted Confidential
8 Information,” or the testimony will be disclosed at a later closed session at EFSEC’s discretion.

9 16. Upon the final disposition of this matter, the attorneys for Olympic shall return
10 promptly to Tidewater, or witness from whom they were obtained, all documents designated
11 “Confidential Information” or “Restricted Confidential Information,” including all documents or
12 copies provided by a party, or its attorney, to any other person. Olympic’s attorneys shall
13 cooperate to achieve such return from all parties.

14 17. In the event any person or party having possession, custody or control of any
15 document or information produced in this action and designated as “Confidential Information” or
16 “Restricted Confidential Information” by another party receives a subpoena or other process or
17 order to produce such information, such person or party shall immediately notify Tidewater via
18 facsimile and regular mail of the document sought by such subpoena or other process or order,
19 shall furnish Tidewater with a copy of said subpoena or other process or order, and shall
20 cooperate with Tidewater on any procedure sought to be pursued by Tidewater. Tidewater shall
21 have the burden of defending against such subpoena, process or order. The person or party
22 receiving the subpoena or other process or order shall be entitled to comply with it except to the
23 extent Tidewater is successful in obtaining an order modifying or quashing it.

24 18. In the event anyone shall violate or threaten to violate any terms of this Protective
25 Order, the parties agree that Tidewater may immediately apply to obtain injunctive relief against
26 any such person violating or threatening to violate any of the terms of this Protective Order.

The parties and any other persons subject to the terms of this Protective Order, agree that EFSEC shall retain jurisdiction over it and them for the purpose of enforcing this Protective Order.

19. Should any document or information designated as “Confidential Information” or “Restricted Confidential Information” be disclosed, through inadvertence or otherwise, to any person or party not authorized under this Protective Order, then the disclosing party shall use its best efforts to bind such person to the terms of this Protective Order; and the disclosing party shall (a) promptly inform such person of all the provisions of this Protective Order; (b) identify such person immediately to Tidewater; and (c) request that such person sign the acknowledgment in the form attached hereto as Exhibit A. The executed agreement shall promptly be served upon Tidewater.

20. Neither the taking of any action in accordance with the provisions of this Protective Order, nor the failure to object thereto, shall be construed as a waiver of any claim or defense in this matter. The entry of this Protective Order shall not be construed as a waiver of any right to make any other type of objection, claim or other response.

21. For purposes of expediting discovery, Tidewater and Olympic agree that should any document which arguably contains work product or communications subject to the attorney-client privilege be inadvertently inspected or produced, such inspection or production shall not constitute a waiver of Tidewater’s work product or attorney-client privileges or any other objection. In the event of such inadvertent inspection or production of privileged documents, Olympic or its attorneys shall immediately return the document and any copies made thereof to Tidewater.

22. The terms of this Protective Order shall in no way affect Tidewater’s right to (a) withhold information on grounds of immunity from discovery such as, for example, attorney/client privilege, or (b) reveal or disclose to anyone any documents or information designated by Tidewater as “Confidential Information” or “Restricted Confidential Information.”

23. This Protective Order shall be without prejudice to the right of Tidewater to request additional protection under CR 26(c).

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IT IS SO STIPULATED:

Date: March 2, 1999

SCHWABE, WILLIAMSON & WYATT

/s/ Agreed on the record

Jay T. Waldron
Of Attorneys for Tidewater Barge Lines and
Tidewater Terminal Company

Date: March 2, 1999

BOGLE & GATES, P.L.L.C.

/s/ Agreed on the record

Joshua Preece
Of Attorneys for Olympic Pipeline Company

IT IS SO ORDERED this 2nd day of March, 1999.

/s/ Ernest Heller

Ernest Heller
Senior Administrative Law Judge

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EXHIBIT A
TO
STIPULATED PROTECTIVE ORDER

In re Application No. 96-1
of)
OLYMPIC PIPELINE COMPANY)
For Site Certification)
_____)

ACKNOWLEDGMENT

I, _____, have read the Stipulated Protective Order attached hereto, I understand its contents, and I agree and acknowledge that I am bound by its terms.

DATED: this _____ day of _____, 1999.

(Signature)

(Full name, printed or typed)