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SOAH DOCKET NO. 473-07-0318
PUC DOCKET NO. 32707

APPLICATION OF RAYBURN COUNTRY ELECTRIC COOPERATIVE, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) FOR A PROPOSED TRANSMISSION LINE IN HENDERSON AND VAN ZANDT COUNTIES, TEXAS	§ § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

EXPLORER PIPELINE COMPANY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND RESPONSE IN OPPOSITION TO RAYBURN COUNTRY ELECTRIC COOPERATIVE, INC.'S REQUEST FOR NON-DISCLOSURE OF TRADE SECRETS

In accordance with P.U.C. PROC. R. 22.144, Explorer Pipeline Company ("Explorer") hereby files its Motion to Compel Production of Documents and Response in Opposition to Rayburn Country Electric Cooperative, Inc.'s ("RCEC") Request for Non-Disclosure of Trade Secrets. RCEC filed its Objections to Explorer's Second Request for Information and Request for Non-Disclosure of Trade Secrets on November 16, 2006; Explorer received a copy of RCEC's filing by mail on November 17, 2006. Accordingly, this Motion to Compel is timely filed.

I. Introduction

RCEC objects to producing the requested information even under the stringent terms of the protective order approved in this proceeding. Its objection is based on RCEC's assertion that the information constitutes privileged trade secrets that are protected from disclosure by Rule 507 of the Texas Rules of Evidence. RCEC makes no claim that the information is irrelevant to the issues in this proceeding. In fact, the information relates directly to a fundamental issue in the case – whether RCEC could avoid the construction of the proposed transmission line by transferring load from the Southwest Power Pool ("SPP") to ERCOT or whether, as RCEC claims, the cost of ERCOT power is so much higher than the cost of SPP power that this alternative is uneconomic.

Explorer does not dispute that the requested documents are commercially sensitive. Based on RCEC's description, however, Explorer disagrees that the information contained in such documents falls within the definition of trade secret that has been applied by the courts,

because it does not appear to be "a formula, pattern, device or compilation" that is a "process or device for continuous use in the operation of the business."[1] Moreover, even if the information does constitute a trade secret under Rule 507, that does not mean that the information may be withheld from the parties to this proceeding; rather, if the information is necessary to a fair adjudication, it must be disclosed to the parties under an appropriate protective order. This is the usual practice in contested proceedings before both the courts and the Commission. As the Texas Supreme Court has held, "discovery cannot be denied because of an asserted proprietary interest in the requested documents when a protective order would sufficiently preserve that interest."[2] In this case, the approved protective order specifically covers the kind of commercially sensitive information that Explorer is seeking and provides detailed requirements concerning who it can be disclosed to, how it will be maintained, and what it can be used for.

RCEC should not be permitted to withhold relevant information that is necessary to a fair adjudication of this case. Instead, RCEC should be required to produce such information subject to the terms of the protective order in this proceeding. Those terms assure RCEC that its commercially sensitive information will be fully protected against disclosure. Accordingly, Explorer respectfully requests that the Presiding Judge grant this Motion to Compel and deny RCEC's Request for Non-disclosure of Trade Secrets.

II. Information Requested

The Request for Information ("RFI") at issue is EPC 2-10, a copy of which is attached as Appendix A. EPC 2-10 requests information relating to RCEC's plans to enter into new power supply agreements for its loads in SPP and ERCOT when RCEC's currently effective agreements terminate.[3] In both its application and in its direct testimony, RCEC has stated that one of the alternatives to construction of the proposed transmission line that it considered was to

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[1] *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958), *cert. denied*, 358 U.S. 898 (1958) (adopting the definition of "trade secret" then found at RESTATEMENT OF TORTS § 757 cmt. b (1939)). The definition of "trade secret" has since been deleted from the RESTATEMENT OF TORTS and now can be found in the RESTATEMENT OF UNFAIR COMPETITION § 39 (1993). *See In re Bass*, 113 S.W.3d 735, 739-40 (Tex. 2003).

[2] *Jampole v. Touchy*, 673 S.W.2d 569, 574-75 (Tex. 1984).

[3] Although the RFIs request information as to RCEC's power purchase plans in both SPP and ERCOT, RCEC has stated that it is not renegotiating its existing SPP supply contract and therefore has no information responsive to the RFIs with respect to SPP. RCEC's Objections at 4. Therefore, only information related to RCEC's ERCOT power supply is at issue in this dispute.

transfer RCEC load currently located in SPP to ERCOT.[4] According to RCEC witness Michael K. Moore, RCEC rejected this alternative because it claims the rates that RCEC pays for service in SPP "are substantially lower than for service in ERCOT."[5] Mr. Moore also testifies that transfer of 30 MW of load from SPP to ERCOT would increase RCEC's power costs by more than $2 million per year.[6] The purpose of Explorer's request is to investigate the basis for and the validity of these claims, which appear to be based on the assumption that RCEC's existing ERCOT supply contract will continue in effect indefinitely. Because RCEC is currently seeking to replace its existing ERCOT supply contract, information as to RCEC's future plans is necessary to determine whether RCEC's claims that ERCOT power is uneconomic will be true prospectively. Explorer needs such information to demonstrate that load transfers to ERCOT are a viable alternative to the proposed transmission line.

In short, the RFIs at issue are directly relevant to a fundamental issue in this proceeding: whether RCEC has demonstrated that there is a need for the proposed transmission line in accordance with PURA § 37.052(c) and whether it has adequately investigated alternatives to construction of the line.[7]

III. Argument

A. The Requested Information Does Not Constitute a Trade Secret Within the Meaning of Rule 507.

The Texas Supreme Court has adopted the definition of trade secret from Section 757 of the Restatement of Torts.[8] That definition reads as follows:

> Any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or another device, or a list of customers. It differs from other secret information in a business ... in that it is not simply information as to single or ephemeral events in the conduct of a business . . . .

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[4] RCEC Application at 22, "Load Transfers to ERCOT;" Direct Testimony of Michael K. Moore at 15–17.

[5] Direct Testimony of Michael K. Moore at 16, lines 6-7.

[6] *Id.* at 16, lines 8-9.

[7] *See* Order of Referral at 3-4.

[8] *Hyde Corp. v. Huffines,* 314 S.W.2d at 776. *See also T-N-T Motorsports, Inc. v. Hennessey Motorsports, Inc.*, 965 S.W.2d 18, 22 (Tex. App.—Houston [1st Dist.] 1998, pet. dism'd); *Computer Associates International, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996).

> A trade secret is a process or device for continuous use in the operation of a business ....[It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management. [9]

Based on the description of the requested documents provided by RCEC in its Objections, the information at issue does not appear to fall within the definition of trade secret within the meaning of Rule 507. The definition requires that a trade secret be a "formula, pattern, device or compilation of information" that is "a process or device for continuous use in the operation of the business," and not be "simply information as to single or ephemeral events in the conduct of the business." As Presiding Judge Sanford pointed out in the only Commission or SOAH order cited by RCEC in its Objections, "[g]enerally, a trade secret applies to an invention or mechanism or device based on a new idea not generally known."[10] Information as to RCEC's power purchase plans, while commercially sensitive, does not fall within that narrow definition. Moreover, such information does not involve a "process or device for continuous use in the operation of the business."

The information that RCEC is seeking to withhold is very different from the type of information found to constitute trade secrets in the cases cited by RCEC in its Objections. Most of those cases involve processes, formulas, or devices that are utilized by a company in its manufacturing or production operations such as secret chemical formulas,[11] a patented garbage compression device,[12] computer source codes,[13] geological seismic data relating to oil and gas development,[14] an assembly line process,[15] and other information of a proprietary nature suitable

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[9] 4 RESTATEMENT OF TORTS § 757 cmt b (1939) (emphasis added).

[10] *Complaint of AT&T Communications of Texas, L.P. Against Southwestern Bell Telephone Company and Southwestern Bell Communications, Inc. D/B/A Southwestern Bell Long Distance*, SOAH Docket No. 473-1558, PUC Docket No. 23606, Order No. 18, Ruling on SBCS's Motion for Non-Disclosure Regarding Contracts with Third Party Vendors, at 5 (May 10, 2001) ("SBCS").

[11] *In re Continental General Tire, Inc.*, 979 S.W.2d 609 (Tex. 1998); *In re Bridgestone/Firestone, Inc.*, 106 S.W.3d 730 (Tex. 2003).

[12] *Hyde Corp. v. Huffines*, 673 S.W.2d 763.

[13] *Computer Associates International*, 918 S.W.2d 453.

[14] *In re Bass*, 113 S.W.3d 735 (Tex. 2003).

[15] *Weed Eater, Inc. v. Dowling*, 562 S.W.2d 898 (Tex. Civ. App.—Houston [1st Dist.] 1978, writ ref'd n.r.e.).

for continuous use in the operation of a business, such as confidential customer lists, pricing, and client information.[16]

Decisions at the Commission have also interpreted the definition of trade secret narrowly. For example, in the *SBCS* case, Judge Sanford found that much of the requested information did not clearly fall under the definition of trade secret because such information was not "a formula, pattern, device or compilation." Although Judge Sanford recognized that information related to SBCS's third-party vendors might compromise the vendors' competitive position if disclosed to the requestor, a competitor of SBCS, she concluded that "the information, especially the contracts, do not clearly fall into any trade secret category" and therefore "do not warrant special protection."[17] Similarly, with respect to information which related to SBCS's market opportunity and market share projections for the future, the Judge found that such information is "not a formula, pattern, device or compilation" within the meaning of the definition of trade secret, and thus did not "deserve any special protections outside those afforded by the Protective Order" in the proceeding.[18]

Like the information that Judge Sanford found did not fall within the trade secret category in *SBCS*, the information Explorer is seeking here does not appear to be a "formula, pattern, device or compilation" that is "an invention or mechanism or device based on a new idea not generally known." Similarly, it does not constitute a "process or device for continuous use in the operation of the business." Accordingly, Explorer disagrees with RCEC's claim that such information constitutes privileged trade secrets under Rule 507.

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[16] *Rugen v. Interactive Business Systems, Inc.*, 864 S.W.2d 548, 552 (Tex. App.—Dallas 1993, no writ).

[17] *SBCS*, *supra* note 10, at 6-7. Judge Sanford distinguished the decision in *Rugen v. Interactive Business Systems, Inc.*, 864 S.W.2d 548, cited by RCEC in its Objections at 4, n.2, pointing out that *Rugen* "involved a non-competition agreement that was in jeopardy; no protective order was available to address confidential material; thus it appears the Court imposed trade secret protections in a liberal fashion not necessary here."

[18] *Id.* at 7-9. *See also Inquiry of the General Counsel Into the Reasonableness of the Rates and Services of Southwestern Bell Telephone Company; Inquiry of the General Counsel into the WATS Prorate Credit*, Docket Nos. 8585, 8218, 15 Tex. P.U.C. Bull. 1851, 1989 Tex. PUC LEXIS 110, Examiners' Order No. 65 at *14-15 (Dec. 11, 1989) (stating that confidential business information, including plans for expansion and future financial projections, "which are not devices for continuous use in the operation of the business nor generally related to the production of goods" do not constitute trade secrets under the Restatement definition).

B. Even if it is a Trade Secret, the Requested Information Should be Produced Under the Protective Order.

1. The trade secret privilege is a qualified privilege, not absolute.

Under Rule 507 of the Texas Rules of Evidence, a trade secret privilege is a qualified privilege, not an absolute one. The courts balance the interest of the party seeking non-disclosure against the need of the other party for information. If the party seeking disclosure demonstrates that privileged trade secret information is necessary for a fair adjudication, disclosure is required pursuant to the terms of a protective order. The leading case in Texas with respect to production of privileged trade secrets is *In Re Continental General Tire, Inc., Relator.*[19] As the Court noted in that case, the trade secret privilege seeks to accommodate two competing interests, the importance of protecting trade secrets and the fair adjudication of lawsuits.[20] The Court found a strong interest in protecting trade secrets, but ruled that "disclosure is required . . . if necessary for a fair adjudication of the requesting party's claims or defenses."[21]

In applying the balancing test, courts take into account the fact that "disclosure of trade secrets to a competitor is much more harmful and disfavored than disclosure to a non-competitor."[22] Significantly, most of the cases cited by RCEC in its Objections involve enforcement of covenants not to compete against former employees or suits for misappropriation of trade secrets by competitors.[23] These situations are very different from the instant case, in which Explorer, an indirect customer of RCEC, is seeking information to evaluate the need for RCEC's proposed transmission line.

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[19] 979 S.W.2d 609.

[20] *Id.* at 612.

[21] *Id.*

[22] *A-Mark Auction, Inc. v. American Numismatic Assoc.*, 1999 U.S. Dist. LEXIS 15192, *7 (N.D. Tex. Sep. 24, 1999).

[23] *Miller Paper Co. v. Roberts Paper Co.*, 901 S.W.2d 593 (Tex. App.—Amarillo 1995, no writ) (enforcement of covenant not to compete); *Weed Eater, Inc. v. Dowling*, 562 S.W.2d 898 (enforcement of covenant not to compete); *Hyde Corp.*, 673 S.W.2d 763 (misappropriation of trade secrets by competitor); *Computer Associates,* 918 S.W.2d at 453 (copyright infringement and misappropriate of trade secrets by competitor); and *Rugen,* 864 S.W.2d 548 (enforcement of covenant not to compete).

In addition, Rule 507 expressly contemplates the adoption of an appropriate protective order to assure that the interests of the producing party in protecting such information are fairly protected:

> When disclosure is directed, the judge shall take such protective measures as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.

Thus, under Rule 507, even if information is found to qualify as a trade secret, the judge may order that it be produced pursuant to an appropriate protective order. Typically, this is the procedure that is utilized in cases involving discovery of trade secrets; as the U.S. Supreme Court has noted, "[a]ctually, orders forbidding any disclosure of trade secrets or confidential information are rare. More commonly, the trial court will enter a protective order restricting disclosure to counsel or to the parties."[24] Consistent with this approach, the Texas Supreme Court held that it is an abuse of discretion to deny discovery where any proprietary interest in requested documents could be safeguarded by a protective order.[25]

2. The requested information is necessary for a fair adjudication of this case.

Although Explorer believes that the requested information does not constitute a trade secret within the meaning of Rule 507, Explorer submits that it is not necessary to resolve that issue here. That is because the information requested by Explorer is clearly required for a fair adjudication of this proceeding. As noted above, RCEC has not claimed that the information is irrelevant. RCEC does claim, however, that the information is not necessary to Explorer's case and suggests that Explorer can obtain information as to future wholesale prices in ERCOT from various published sources or from its own consultants. Explorer strongly disagrees.

In order to demonstrate that the transfer of load from SPP to ERCOT is a viable alternative to the proposed line, Explorer must obtain information as to RCEC's projected ERCOT power costs in the future. This is critical since the cost information that RCEC relies on to argue that load transfer is not a viable alternative appears to be based on a contract that will be supplanted by a new contract.[26] General wholesale price projections in ERCOT will not show

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[24] *Federal Open Market Committee v. Merrill*, 443 U.S. 340, 362 n.24 (1979).

[25] *See Jampole v. Touchy*, 673 S.W.2d at 574-75.

[26] RCEC Objections at 5-6.

what RCEC's actual costs will be. Information as to the kind of power that RCEC is seeking (such as power produced from a coal-fired generating facility or a gas-fired facility), the nature of its interest (as a purchaser of power in the ERCOT wholesale market or as a joint owner of a generating facility), the length of the contract, how the power is priced, and other factors are critical to determining what RCEC's future ERCOT power costs will be. If, for example, RCEC plans to purchase an ownership interest in a coal-fired generation plant, its ERCOT power costs may be lower in the future than its SPP costs, which would disprove RCEC's claim that load transfers to ERCOT are not a viable alternative to the proposed transmission line. While RCEC asserts that no supply contract has yet been finalized, specific information as to RCEC's plans is necessary for Explorer to prepare meaningful projections as to RCEC's future power supply costs. Denying Explorer access to the requested information will severely impair its ability to present its case in this proceeding.

3. Commission precedent supports access to commercially sensitive information, including trade secrets, under the terms of a protective order.

The Commission's general approach in dealing with disclosure of highly sensitive commercial information, including trade secrets, is to require production of the information pursuant to a protective order if the party seeking discovery is able to demonstrate the need for the information in presenting its case. In the *SBCS* case discussed above, the Presiding Judge agreed that certain of the requested information "may fall into the trade secret category."[27] Even with respect to such information, however, the Judge concluded that it "was material to and appears necessary to a fair adjudication of issues in this case,"[28] and therefore ordered the information produced under the protective order in that proceeding. Other Commission decisions have also required disclosure of such information pursuant to protective orders.[29]

A particularly instructive example of how commercially sensitive information in the electric industry has been handled at the Commission can be found in *Application of TXU Electric Company for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201*

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[27] *SBCS*, *supra* note 10, at 7. The specific information included "various SBC internal e-mails, promo break-even analyses, listing of rates and costs." *Id.*

[28] *Id.*

[29] *See, e.g., Application of Central Power and Light Company for Authorization to Change Rates and to Reconcile Fuel Costs*, Docket No. 14965, 21 Tex. P.U.C. Bull. 1122, 1996 Tex. PUC LEXIS 4, Order Ruling on Motion to Compel at *3 (Jan. 12, 1996) (ordering utility to produce trade secret material under protective order).

and Public Utility Commission Substantive Rule 25.344.[30] In that case, TXU Electric Company ("TXU") sought to prevent disclosure of certain information under a protective order to all parties to its unbundled cost of service proceeding except for the Commission's Staff and the Office of Public Utility Counsel ("OPC") on the ground that the information constituted a trade secret under Rule 507. The information, which was at least as sensitive as the information RCEC seeks to withhold, included TXU's "entire operating cost structure for generation service as well as competitive market projections, competitive generation plans, and plans for achievement of emissions reductions."[31] Despite the sensitivity of the information, TXU ultimately entered into an agreement with the parties under which a supplemental protective order would be issued adopting additional restrictions on access to the information at issue.[32] The additional protections included limiting access to the information to outside attorneys and consultants, restricting use of the information to the TXU proceeding, and similar protections designed to protect TXU against improper disclosure – protections already contained in the protective order approved in the instant proceeding. The Presiding Judge approved the supplemental protective order in the TXU case on May 9, 2000.[33]

4. The protective order in this proceeding expressly covers the kind of information requested by Explorer.

The protective order approved by the Presiding Judge in this proceeding contains detailed provisions assuring RCEC that any commercially sensitive information it produces, including trade secrets, will be fully protected against improper or unwarranted disclosure.[34] The order establishes two categories of protected information, Protected Materials and Highly Sensitive Protected Materials ("HSPM"). The HSPM category is specifically designed to cover the kind of information that Explorer has requested in EPC 2-10, including "contractual information pertaining to contracts that specify their terms are confidential," "market-sensitive fuel price

[30] Docket No. 22350, SOAH Docket No. 473-00-1015 (Oct. 4, 2001).

[31] *Id.*, TXU's Response to the Intervenors' Motion to Compel Production of TXU Electric's Privileged Material at 8 (May 2, 2000).

[32] *Id.*, Joint Motion to Supplement TXU Electric's Protective Order (May 8, 2000).

[33] *Id.*, Order Supplementing TXU Electric's Protective Order (May 9, 2000).

[34] Order No. 12: Protective Order (Nov. 1, 2006).

forecasts, wholesale transactions information and/or market-sensitive marketing plans," and "business operations or financial information that is commercially sensitive."[35]

Access under the protective order is strictly limited to outside attorneys and consultants; employees of a party are not permitted to review HSPM unless specifically authorized by the Presiding Judge (¶ 8). There are also detailed requirements concerning copying and delivery of documents (¶ 9), treatment of HSPM during and after the proceeding (¶¶ 9-10), maintenance of HSPM during appeal (¶ 24), the purposes for which HSPM can be used (¶ 21), and return of HSPM after the proceeding is completed (¶ 31). Finally, the protective order prescribes remedies for a breach of the protective order (¶ 39).

RCEC's argument that Explorer should not be allowed access to the requested information under the protective order because Explorer has an interest in the cost of power and purchases power from other ERCOT suppliers lacks merit.[36] Virtually any party in a litigated electric proceeding before this Commission has an interest in the cost of power in the wholesale market in Texas. If RCEC's rule were adopted, no one would ever be allowed to obtain access to a utility's wholesale power information in a contested proceeding on the theory that it might use such information in negotiations with other power suppliers. In fact, the protective order in this case expressly limits the use of protected materials solely for the purpose of this proceeding and prohibits the use of such materials in furtherance of "any business or competitive endeavor of whatever nature."[37]

RCEC's suggestion that Explorer will use the information it has requested from RCEC "in negotiations with its power suppliers throughout Texas, including the distribution

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[35] The full definition of HSPM is as follows:

> The term "Highly Sensitive Protected Materials" is a subset of Protected Materials and refers to documents or information which a producing party claims is of such a highly sensitive nature that making copies of such information or providing access to such documents to employees of the Reviewing Party (except as set forth herein) would expose a producing party to unreasonable risk of harm, including but not limited to (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act; (b) contractual information pertaining to contracts that specify that their terms are confidential or which are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; and (d) business operations or financial information that is commercially sensitive.

Id. ¶ 6 at 2-3.

[36] Objections at 7.

[37] Order No. 12: Protective Order ¶ 21 at 9.

cooperatives served by Rayburn and REPs participating in ERCOT's wholesale market,"[38] or, even worse, disclose the information to other suppliers seeking to sell power to RCEC, unjustifiably assumes that Explorer's outside attorneys and consultants (the only parties who can access the information) will blatantly violate the terms of the protective order. This is inappropriate and baseless. RCEC also argues that even if Explorer's outside attorneys and consultants do not intentionally violate the protective order they will be unable to "'un-know' the knowledge gained from reviewing the Information so that it cannot be used (even unintentionally) in subsequent matters with subsequent clients."[39] This contention is contrary to the fundamental premise of the Commission's protective order procedures – namely, that persons granted access to protected materials will comply with the provisions of the protective order, including the provision that limits the use of the information to the particular proceeding (¶ 21). RCEC's claim that the Commission's protective order procedures do not provide adequate protection for its commercially sensitive information is unsupported and should be flatly rejected.

IV. Conclusion

Explorer respectfully submits that RCEC should be required to produce the information requested in EPC 2-10 under the terms of the protective order in this proceeding. As noted above, the information is clearly relevant to a central issue in this proceeding. Based on the description of the information contained in RCEC's objection, RCEC has failed to demonstrate that the information falls within the definition of a trade secret under Rule 507 since it does not appear to be a "formula, pattern, device or compilation of information" that is "a process or device for continuous use in the operation of the business." Even if the information does constitute a trade secret, however, the information is clearly necessary to a fair adjudication of the case. Failure to require RCEC to produce the information would interfere with Explorer's ability to present its case in this proceeding. Moreover, the protective order approved by the Presiding Judge was crafted specifically to cover commercially sensitive information such as the information at issue here, and RCEC should not be allowed to preclude a party from gaining access to that information if the party agrees to the terms of the protective order.

[38] Objections at 7.

[39] *Id.*

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WHEREFORE, for the foregoing reasons, Explorer Pipeline Company respectfully requests that its Motion to Compel be granted and that Rayburn Country Electric Cooperative, Inc.'s Request for Non-disclosure of Trade Secrets be denied.

Respectfully submitted,

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November 27, 2006

CERTIFICATE OF SERVICE

I, James Guy, certify that a copy of this document was served on all parties of record in this proceeding on November 27, 2006, by regular mail, facsimile transmission or hand-delivery.

James Guy

APPENDIX A

EXPLORER PIPELINE COMPANY'S
SECOND SET OF REQUESTS FOR INFORMATION
TO RAYBURN COUNTRY ELECTRIC COOPERATIVE, INC.

EPC 2-10. Please refer to Item 14 of the CCN Application, at 22, "Load Transfers to ERCOT."

a. Please provide copies of all documents, studies, analyses, correspondence and communications that relate to RCEC's plans or potential plans to enter into new power supply agreements for its loads in SPP and ERCOT when the currently effective power supply agreements terminate.

b. Does RCEC expect that its cost for its purchases for its SPP load will continue to be "considerably lower" than its costs for its ERCOT load after one or both of the current power supply agreements expires and is replaced by a new agreement? Please explain your answer in detail.

c. Please provide copies of all documents, studies, analyses, correspondence and communications that relate to the cost of current or future power purchases for RCEC's SPP and ERCOT loads.