

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

PUGET SOUND ENERGY INC,

Cause No: 16-2-06889-3

Plaintiff(s) ,

ORDER

vs.

DENYING INJUNCTIVE RELIEF

CITY OF TACOMA,

Defendant(s) .

The Court, having reviewed the pleadings of the parties, having heard oral arguments and having reviewed the requested documents in camera; Plaintiff's Motion for a Preliminary Injunction is hereby denied.

FINDINGS OF FACT

1. Defendant, City of Tacoma received a Public Records Act disclosure request from Defendant, John Carlton.
2. The City, after reviewing Carlton's request, informed Plaintiff that it intended to release the requested records to Carlton stating, "The City has records responsive to your request, however the City is aware that PSE and its contractor CB&I may have a proprietary interest in the responsive records. This alone does not provide us a lawful basis to withhold the records, and to my knowledge there is no applicable statute that would exempt any portion of these documents from disclosure".
3. Plaintiffs sought and were granted a Temporary Restraining Order precluding release of the records.
4. The Puget Sound Energy (PSE) Liquefied Natural Gas and Peak Shaving Project (the Project) is not regulated by the Federal Energy Regulatory Commission (FERC), but rather by the Pipeline Hazardous Materials Safety Administration (PHMSA). Under certification by PHMSA,

1 the Washington Utilities and Transportation Commission (WUTC) would oversee design and  
2 construction of the Project.

- 3 5. Critical Energy Infrastructure Information (CEII) is defined in 18 CFR 388.113 as specific  
4 engineering, vulnerability or detailed design information about proposed or existing critical  
5 infrastructure that relates details about the production, generation, transportation,  
6 transmission or distribution of energy.
- 7 6. FERC has not designated the Facility Siting Report documents as CEII.
- 8 7. The information contained in the Final Environmental Impact Statement (FEIS) includes  
9 engineering, vulnerability analysis, detailed design information including mechanical drawings  
10 and facility specifications that relates details about production, generation and transportation  
11 of energy products, however, the information in the EIS is obviously available to the public.
- 12 8. GEXCON's CSD Modeling software PHAST and FLACS, version 9.1 was approved by the  
13 US Department of Transportation as an appropriate for modeling vapor dispersion using tools  
14 and applied safety factors, under 49 CFR 193.2059. Vapor cloud dispersion modeling, using  
15 federally approved software is presented in 2D and 3D formats in Appendix J to the Siting  
16 Report and in a separate DVD.
- 17 9. PSE's contractors, GEXCON and CB&I are not parties to this litigation nor have they sought  
18 to intervene although they claim a non-disclosure agreement with PSE.
- 19 10. GEXCON states that its report is intended for use by CB&I and PSE for regulatory purposes.
- 20 11. The hazard assessment modeling in the Facility Siting Report has been provided to  
21 Defendant City of Tacoma engineering consultants including Ecology and Environment Inc.  
22 (preparation of FEIS) and Braemer Engineering (design, engineering and risk analysis).  
23 There is no evidence of a non-disclosure agreement between the City of Tacoma and its  
24 contractors limiting disclosure of the requested information.
- 25 12. Flammable gas dispersion analysis is included in the EIS and is further discussed in  
response to citizens' questions as to the findings of the EIS.

#### Conclusions of Law

- 1 The requested materials are not exempt from disclosure under Washington Public Records  
2 Act RCW 42.56.270(1). There is no showing here that disclosure would result in private gain  
3 or public loss. Much of the modeling is based on federal standards using software approved  
4 by federal regulators.

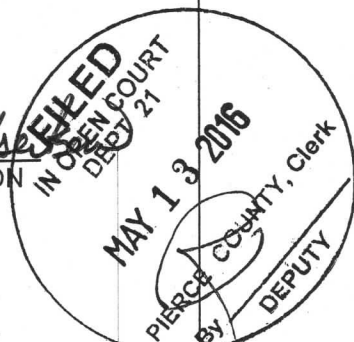
- 1 2. The requested documents are not exempt under RCW 42.56.270(11). The PHAST and  
2 FLACS flammable gas dispersion analysis modeling and the related software are based on  
3 federal standards and accordingly would not yield an economic advantage to competitors.  
4 3. Washington's Uniform Trade Secrets Act RCW 19.108 et seq. is not an "other statute" that  
5 requires exemption under the Public Records Act, RCW 42,56,070(1). There has been no  
6 showing that the information requested is not otherwise ascertainable or is not generally  
7 known.  
8 4. The requested material is not exempt under RCW 42.56.420 et seq. Plaintiffs have not  
9 shown that the requested materials are records assembled, prepared or maintained to  
10 prevent or respond to terrorist attacks. Much of the information regarding the project siting is  
11 available to the public through the EIS. The documents in issue were prepared to support  
12 environmental concerns regarding potential impact of spills and modeling of spill abatement  
13 plans and risk assessments of dispersion of vapor clouds and other environmental risk  
14 factors; not to prevent or respond to terrorist attack.  
15 5. 18 CFR 388.113 is not an "other statute" and does not preempt Washington's Public Records  
16 Act in this particular case. 18 CFR 388.113 are regulations promulgated by FERC under  
17 authority granted by Congress under the Federal Power Act as amended by the Energy  
18 Policy Act of 2005. The regulations are directed at managing records provided to FERC  
19 under the NEPA pre-filing process. CEII is a designation determined by FERC and applied to  
20 records administered or managed by FERC that fall within exemptions under the Freedom of  
21 Information Act (FOIA). It is up to FERC, not the Court, to determine whether documents in  
22 its control are CEII. In this case FERC has not designated the requested material as CEII.  
23 FERC in fact informed defendant Carlton that it has no documents related to the LNG project  
24 at issue here.

25 Conclusion

Based on these findings of fact and conclusions of law, Plaintiffs have failed to show a likelihood of prevailing on the merits, and have not shown a clear legal or equitable right to preclude City of Tacoma from disclosing the requested materials. The Court Hereby Denies Plaintiff's motion for Injunctive relief.

DATED this 12 day of May, 20 16.

  
JUDGE FRANK CUTHBERTSON





IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

PUGET SOUND ENERGY INC,

Cause No: 16-2-06889-3

Plaintiff(s)

ORDER ~~STAYING~~  
(OR) ~~PROCEEDING~~

vs.

CITY OF TACOMA,

Defendant(s)

This matter is hereby stayed  
pending appeal of this court's ruling  
denying injunctive relief.  
Bond is increased to \$25,000.00 USD  
Payable one week from today.

DATED this 13 day of May, 2016.

JUDGE FRANK CUTHBERTSON

Attorney for Plaintiff/Petitioner

WSBA# 45811

Arthur West  
Defendant

Attorney for Defendant/Respondent

WSBA# 36644

Martin A Lantz  
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Deputy City Attorney City of Tacoma