



1. On January 24, 2024, the PUC issued an Order granting confidential treatment of registration information. The scope of the Order applies to registration information related to (1) volumetric information; and (2) the identities of supplier and client business information. In particular, the PUC concluded that “[w]e find the circumstances presented...necessitate a blanket determination that the data provided will be handled confidentiality...” **Order Granting Confidential Treatment of Registration Information, Docket No. 23-2220 Rule at p. 10 (1-24-24)**. It is noted that the Order does not require an individual registrant to demonstrate or proffer a particularized good faith basis for confidential treatment. All registrants are entitled to the confidentiality provisions set forth in the Order.

2. The Commission also directed that ANR and DPS to submit for approval a protective agreement to facilitate the sharing of information between the entities. **Order Granting Confidential Treatment of Registration Information, Docket No. 23-2220 Rule at p. 10 (1-24-24)**.

3. DPS’ and ANR’s protective agreement contains the following pertinent provisions:

a.) “There must be a good faith basis for all claims of confidentiality and the burden of establishing that the confidential treatment of this information is warranted is on the entity seeking to prevent disclosure.”  
**See ANR’ and DPS’ proposed Protective Agreement at ¶ 2.**

b.) “In response to a subpoena, the Department or ANR will produce the documents or information within the timeframe prescribed by the subpoena or applicable state law unless a registrant, or their representative obtains a Protective Order from a court of the Commission barring the production of the documents or information.” **See ANR’ and DPS’ proposed Protective Agreement at ¶ 7.**

4. The requirements in paragraph 2 of the proposed Protective Agreement set forth above should be stricken. The provisions should be stricken because they are inconsistent with the Commission’s Order that provides for blanket protection of the registrant’s volume, supplier, and customer information. It is wholly inconsistent with the PUC’s Order that the registrant has “the burden of establishing that the confidential treatment of this information is warranted...” This burden has already been met in obtaining the Commission’s blanket confidentiality order. No further demonstration is required.

5. The provisions in paragraph 7 of the proposed Protective Agreement are inadequate because they fail to provide adequate notice and provide an opportunity to obtain a protective order. As written, either ANR or DPS can release the information in response to a subpoena, unless a registrant obtains a protective order within the time frame provided in the subpoena or the public records statutes. The procedural safeguards here are completely inadequate. First, there is no provision that provides notice to the registrant of the existence of the subpoena or public records request. Such notice is necessary so that an implicated party can file a motion to quash and obtain a protective order. Otherwise, how would someone know that such a request ever occurred.

Second, ANR and DPS should be precluded from producing information once a motion to quash or motion for protective order has been filed. Production should be stayed until the courts or the PUC rules on the respective motion. The protections contained in the PUC's order granting the confidential treatment of volume, buyer, and supplier information would become illusory if agencies turned over information while the courts were deliberating on the propriety of the subpoena or public records exemption.

In addition, restricting production until a court the PUC rules on a timely motion to quash or protective order is consistent with V.R.C.P. 45 governing subpoenas. V.R.C.P. 45(c)(2)(B) provides in pertinent part:

“If objection is made, the party serving the subpoena shall not be entitled to the requested production or to inspect, copy, test or sample the materials or inspect the premises except pursuant to an order of the court for which the subpoena was issued.”

ANR's and DPS' protective agreement should comport with the protections and procedures that already exist in accepted civil practice.

### **Conclusion**

**WHEREFORE**, for the reasons set forth above, the PUC should deny ANR's and DPS's motions for protective order. They should be directed to revise the proposed Protective Agreement consistent with the items identified in this Memorandum of Law. They should be directed to:

1. Remove the last sentence of paragraph 2 as it is wholly inconsistent with the PUC's Order.

2. Modify Paragraph 7 to provide notice to the respective registrant and permit disclosure only after a Court or the PUC has authorized such disclosure after the filing of a timely motion to quash or motion for protective order.

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