

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF SOUTHWESTERN PUBLIC)
SERVICE COMPANY’S 2026 INTEGRATED RESOURCE) Docket No. 25-00076-UT
PLAN FOR NEW MEXICO)**

**ORDER GRANTING MOTION
FOR PROTECTIVE ORDER**

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon Southwestern Public Service Company’s (“SPS”) “Verified Motion for Protective Order” (“Motion”). The Commission grants the Motion and issues a Protective Order.

BACKGROUND

1. On March 11, 2026, SPS filed the Motion requesting that the Commission issue a protective order to prevent the public disclosure of material of a confidential, proprietary, or commercially sensitive nature that may be relevant to the Commission as part of SPS’s compliance with 17.7.3.9(A) NMAC.¹ Utility Division Staff does not oppose the motion.²

2. By the response deadline, no additional party had intervened or filed a response to SPS’s Motion.

DISCUSSION

3. Every person in New Mexico has the right to inspect public records unless otherwise provided by law.³ Concordantly, the Commission’s policy is to allow full and complete access to public records in accordance with law.⁴ The Commission’s Integrated Resource Plan Rule serves the Commission’s objectives of increasing transparency, involving stakeholder participation early in the process, and tying the integrated resource plan outcome directly to the

¹ Motion (Mar. 10, 2026) ¶¶ 1-2.

² *Id.* ¶¶ 7.

³ NMSA 1978, § 14-2-1 (2025).

⁴ 1.2.2.8(A) NMAC.

procurement process.⁵ But the Public Utility Act permits the Commission to issue protective orders and to determine whether records containing confidential or proprietary information may be produced and that they are not subject to the Public Records Act.⁶ The Commission's rules of procedure contain processes for a party to obtain a protective order.⁷

4. SPS appropriately filed the Motion seeking a protective order, and the Commission routinely issues protective orders to regulate the handling of confidential and proprietary information and trade secrets.

5. SPS's proposed protective order is not opposed by any party.

6. Issuance of a protective order in and of itself does not conclude whether any claimed information is or is not confidential. It does, however, provide the procedures for the initial treatment of such information. In keeping with the Commission's commitment to transparency in integrated resource planning, SPS is expected to limit confidential designations to information that is properly entitled to such protection. Any party may seek to have the protections lifted.

FINDINGS AND CONCLUSIONS

7. The Motion is in proper form, is well taken, and should be approved.

8. The form of order submitted should be revised to reflect interim e-filing procedures.

9. The Commission concludes that it is necessary to issue a protective order in this docket to protect potential confidential or proprietary information and trade secrets from public disclosure.

⁵ 17.7.3.6(B) NMAC.

⁶ See NMSA 1978, § 62-6-17(C) (1993).

⁷ See 1.2.2.8(B) NMAC.

10. The Commission concludes that SPS's Motion should be granted and that a protective order should be issued substantially in the form proposed by SPS, with amendments to reflect the Commission's interim e-filing procedures.⁸

IT IS THEREFORE ORDERED:

A. SPS's Motion is GRANTED.

B. The Protective Order, attached hereto as Exhibit A, provides the processes and procedures for the handling of confidential information, proprietary information, trade secrets, and claims to the same.

C. This Order is effective when signed.

D. In computing time in accordance with statute, regulation, or Commission order, the computation shall begin on the date that this Order is filed.

SIGNED under the Seal of the Commission at Santa Fe, New Mexico, this 21st day of April, 2026.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Patrick J. O'Connell, electronically signed
PATRICK J. O'CONNELL, COMMISSIONER



⁸ The Commission's PRCe360 interim working rules may be found [here](#). This protective order mirrors the order recently entered by the Commission in PNM's pending IRP docket. *See* Docket. No 23-00409-UT, Order Granting Motion for Protective Order (Feb. 18, 2026), Exhibit A.

Exhibit A – Protective Order

This Protective Order establishes the procedures for the expeditious handling of information that a party claims is confidential material. This Protective Order shall not be construed as a ruling on the confidentiality of any document or other information.

I. Designating Information as Confidential

A. This Protective Order provides protection for confidential and proprietary information identified and clearly designated by parties in all-caps as “CONFIDENTIAL MATERIAL.”

B. Material may only be designated as confidential if the disclosing party can establish that the material is not in the public domain and is protected by applicable law, including the Inspection of Public Records Act (“IPRA”) and the New Mexico Trade Secrets Act.

C. No material shall be treated as Confidential Material if it:

1. is in the public domain at the time of disclosure;
2. becomes part of the public domain through no fault of a party who received it under this Order;
3. is in the lawful possession of the receiving party at the time it is disclosed under this Order;
4. is or has been received by a party on a nonrestricted basis from a third party that has the right to make such a disclosure; or
5. has been or becomes disclosed as non-confidential material in any other legal or regulatory proceeding.

D. All material submitted to the Commission as provided below or furnished to other parties pursuant to any request for information, subpoena or other mode of discovery that is claimed to be of a trade secret, proprietary, or confidential nature, and protectable under IPRA, shall be clearly designated in all-caps as “CONFIDENTIAL MATERIAL” by the party claiming protection. If a document contains both confidential and non-confidential information, the party claiming confidentiality shall claim protection only for the portions of the document which satisfy the standards for confidential treatment and clearly identify the specific portions of the document for which confidentiality is claimed.

II. Segregation of Files

A. Access to and review of confidential material shall be strictly controlled by the terms of this Protective Order.

B. Confidential material provided in response to discovery requests shall not be filed with the Commission.

Exhibit A – Protective Order

III. Confidentiality Agreement Requirement

- A. No access to confidential material shall be authorized under the terms of this Protective Order until the person desiring access to such material executes a confidentiality agreement in the form herein provided.
- B. Commissioners and Commission advisory staff are not required to sign a confidentiality agreement.

IV. Availability to the Commission and Parties

Except as otherwise provided in this Order, the only persons to be permitted access to the confidential material, other than the Commissioners and advisory staff, are parties to this proceeding, a party's employees, a party's legal counsel, the Commission's designated Independent Monitor, and Commission advocacy staff, who have executed a confidentiality agreement in the form provided in this Protective Order.

V. Availability to Non-Signatories

All persons who are on the official service list who have not executed a confidentiality agreement shall be entitled to receive all non-confidential portions of any documents marked as confidential material in redacted form.

VI. Preservation of Confidentiality

- A. Persons afforded access to any confidential material by reason of this Protective Order shall not use or disclose the confidential material for purposes of business or competition, or any other purpose other than the purpose of preparation of and conduct of this proceeding (except as provided in Paragraph XII), including preparation of and conduct of any appeals arising from this proceeding.
- B. Persons afforded access to confidential material shall use such information solely as contemplated herein and shall take all reasonable precautions to keep the confidential material secure as trade secret, confidential, or proprietary information and in accordance with the purposes and intent of this Protective Order. Such persons shall not discuss the contents thereof with anyone other than persons who have executed a confidentiality agreement, and shall not, in any manner, reveal, disclose, publish, or make known the contents of the confidential material to anyone else except as otherwise provided in this Protective Order.
- C. No person may copy, microfilm, microfiche, or otherwise reproduce the information without the written consent of the party claiming protection except for his or her own use, or the use of persons permitted access to the information and who have signed a confidentiality agreement.

VII. Challenges to Claims of Confidentiality

- A. A party may, at any time, challenge a claim of confidentiality.
- B. In the event of such a challenge, the following procedures shall apply:
 - 1. The party asserting the challenge shall: first contact counsel for the providing party and attempt to resolve any differences informally and, if the parties cannot resolve the disagreement informally, file a motion with the Commission for a ruling on the challenge (referred to hereinafter as a “request for confidentiality determination”).
 - 2. The owner or holder of the confidential material shall, without order or action by the Commission, and within five business days after a request for confidentiality determination has been served on it, file its initial brief and supporting affidavit stating in detail the basis for its confidentiality claims and may request a hearing on the matter. Failure to file an initial brief and supporting affidavit shall be deemed a waiver of the confidentiality claims.
 - 3. Within five business days after service of the initial brief and supporting affidavit, the party that filed the request for confidential determination shall file a brief and supporting affidavit in response.
 - 4. Within three business days of service of such response brief and supporting affidavit, the owner or holder of the confidential material may file a reply brief.
 - 5. Any other party may brief its position, either opposing the owner or holder of confidential material in a brief filed five business days after service of the initial brief or supporting non-disclosure in a brief filed within three business days after service of the responsive brief of the party that filed the request for confidentiality determination.
 - 6. The burden of proof to show the confidentiality of the confidential material shall be on the party claiming confidentiality.
 - 7. The parties shall not make public any information regarding disputed alleged confidential material until the Commission rules on the claim of confidentiality.
 - 8. Following a Commission ruling on confidentiality, the information shall be made available only pursuant to the Commission’s Order.

VIII. Requests Not to Disclose to Persons Signing a Confidentiality Agreement

- A. If any party possessing confidential material wishes to decline to provide specific parties with any or all confidential material which the possessor reasonably believes should be kept confidential from such party notwithstanding the fact that such party may have executed a confidentiality agreement, the party possessing the confidential material shall file a pleading with the Commission prior to the time the confidential material is due to be produced setting forth the specific reasons that the confidential material should not be provided to such party.
- B. The party denied access to the confidential material may file a response within five business days of service of the possessor’s pleading.

Exhibit A – Protective Order

- C. The party seeking to preclude others from receiving confidential material has the burden of proof.
- D. The confidential material shall not be produced to the party denied access pending a ruling by the Commission.

IX. Use of Confidential Materials and Bench Requests

- A. Use by Parties: If any party other than the party asserting the claim of confidentiality intends to use any claimed confidential material in this proceeding, and even if the party using the confidential material does not intend to challenge the claim of confidentiality, the following shall apply:
 - 1. the party intending to use the confidential material shall inform the party asserting the claim of confidentiality of the intent and manner of use.
 - 2. Within three business days of receiving notice of the intent to use confidential material, the party claiming confidentiality of the confidential material shall inform the party intending to use the confidential material whether it objects to public disclosure of the confidential material. If the party asserting confidentiality fails to so notify the potential user, its objections shall be waived.
 - 3. Pending a ruling on confidentiality, any party using confidential material shall, on the date that the notice is filed:
 - 1. file a public version with the confidential material redacted; and
 - 2. file a confidential version.
 - 4. If the party asserting the confidentiality of the confidential material objects to the public disclosure of the confidential material, it shall file a request seeking confidential treatment of the material within three business days after it receives notice of the intended use of confidential material.
 - 5. Any request filed pursuant to Paragraph IX A. 4 shall include:
 - 1. An affidavit consistent with the provisions in 1.2.2.8.B(1) NMAC that satisfies the claimant's burden of making a prima facie showing that protection is appropriate for the particular information claimed to be confidential material and includes, at a minimum, the following information with respect to each document marked confidential:
 - i. the date that the confidential material was prepared;
 - ii. the author of the confidential material;
 - iii. a list of all persons, other than the disclosing party and its representatives, in possession of the confidential material;
 - iv. the subject matter of the confidential material;
 - v. a description of the contents of the confidential material;
 - vi. the number of pages which the confidential material comprises;
 - vii. how the confidential material was acquired; and
 - viii. the basis for all claims of confidentiality, including a showing that each document marked confidential comes within one or

Exhibit A – Protective Order

more of the exceptions to the general disclosure requirement of the IPRA.

2. A brief that sets forth the legal basis for protection and states whether the public interest requires that the confidential material be used and whether an abstract of or the extraction of specific information from the Confidential Material can be used as an alternative.
6. Within seven days of the filing of a request under Paragraph IX A. 4 or as otherwise ordered, the party seeking to use the confidential material shall file a response addressing the legal and factual merits of each confidentiality claim, including the party's position on whether the confidential material is in fact confidential. Any factual assertions in the response shall be supported by a verifying affidavit.
- B. Use by Party Asserting Confidentiality: If any party asserting the confidentiality of confidential material intends to use confidential material in this proceeding, the following procedure shall apply:
1. Such party shall file a notice of such intent, describing the manner of use and requesting confidential treatment of its use of the material.
 2. Such party shall file a request seeking confidential treatment of the material on the date that the notice required under Paragraph IX B. 1 is filed. Such request shall include the affidavit and brief described in Paragraph IX A. 5.
 3. Within seven days of filing of a request, or as otherwise ordered, Staff shall, and any other party may, file a response addressing the legal and factual merits of each confidentiality claim, including Staff's or the party's position on whether the confidential material is in fact confidential. Any factual assertions in the response shall be supported by a verifying affidavit.
- C. Bench Requests: If the Commission requires a party to file a document and the party objects to public disclosure of the document or portions of the document, the following procedure shall apply:
1. On or before the deadline for filing the document, the party shall file a public version of the document with the Confidential Material redacted and file a confidential version of the document.
 2. On or before the deadline for filing the document, the party shall file a request seeking confidential treatment of the confidential material, including the affidavit and brief described in Paragraph IX A. 5.
 3. Within seven days of the filing of the request seeking confidential treatment of the confidential material, or as otherwise ordered, Staff shall, and any party may, file a response addressing the legal and factual merits of each confidentiality claim, including Staff's or the party's position on whether the confidential material is in fact confidential. Any factual assertions in the response shall be supported by a verifying affidavit.

Exhibit A – Protective Order

- D. Rulings:
1. The Commission shall evaluate the materiality and relevance of the confidential material and, if necessary, determine if the claimed confidential material in fact contains confidential or proprietary information and, if so, determine whether the public interest requires that the confidential or proprietary information be produced or whether an abstract of or the extraction of specific information from the confidential or proprietary information should be produced.
 2. The claimed confidential material shall remain confidential pending a ruling thereon by the Commission. Following a Commission ruling on confidentiality, the information shall be available strictly in conformity with the Commission's order.
- E. Hearings Involving Confidential Material: In the course of this proceeding, those portions of any hearings during which confidential material obtained pursuant to the terms of this Protective Order are likely to be disclosed shall be conducted in a manner that the Commission determines is consistent with the Open Meetings Act, IPRA, the Public Utility Act, and other relevant statutes.
- F. Admissibility: Staff and the parties retain the right to object to the admission into evidence of any confidential material on any proper grounds, including relevance or materiality.

X. Filing and Service

- A. Confidential material and executed confidentiality agreements shall be filed in accordance with the Commission's PRCe360 interim working rules.
- B. Filing in accordance with the Commission's PRCe360 interim working rules will satisfy service requirements.

XI. Appeal

- A. Sealed portions of the record in the proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal, but under seal as designated herein for the information and use of the court.
- B. If a portion of the record is forwarded to a court under seal for the purposes of an appeal, the appealing party shall notify the providing party of which portion of the sealed record has been designated as necessary to the record on appeal.

Exhibit A – Protective Order

XII. Continuation of Protection

Disclosure of confidential material is limited by this Protective Order for two years, provided that the Commission may extend the period of protection upon a motion of a party filed prior to expiration of the period of protection.

XIII. Use in Other Commission Proceedings

- A. Nothing in this Protective Order prohibits a person who executes a confidentiality agreement from seeking to use confidential material in other Commission proceedings, subject to any applicable rulings in such proceedings, and provided the original owner or holder of the confidential material is served with the notice of intent to use confidential material.
- B. The procedure set forth in Paragraph IX A. shall apply.

XIV. Conflict and Resolution

- A. The provisions of 1.2.2 NMAC that are in conflict with this Protective Order are waived pursuant to 1.2.2.8(D) NMAC.
- B. Any person executing a confidentiality agreement consents to the jurisdiction of the Commission and the New Mexico courts for resolution of disputes regarding alleged violations of this Order.

XV. Form of Confidentiality Agreement

- A. The following statement – accompanied by the swearing party’s printed name, title, party affiliation, business address, date, and signature – shall comprise the confidentiality agreement:

“I am familiar with the terms and conditions of the protective order entered by the Commission in the above captioned docket. I agree to be bound by the terms and conditions of that order. I consent to the jurisdiction of the New Mexico Public Regulation Commission and the courts of the State of New Mexico for resolution of any dispute regarding alleged violations of the protective order and this confidentiality agreement.”