

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF)	
APPLICATION FOR PERMIT)	ORDER ON PREHEARING
NO. 63-34614 IN THE NAME OF)	MOTIONS, ORDER VACATING
MICRON TECHNOLOGY INC.)	HEARING, AND NOTICE OF
)	STATUS CONFERENCE
)	

BACKGROUND

On September 30, 2019, the hearing officer issued *Order Authorizing Discovery and Disclosure and Scheduling Order* in this contested matter. The order opened discovery and set scheduling deadlines in anticipation of a hearing contemplated for March 2020. Applicant Micron Technology Inc (“Micron”) and protestant Idaho Foundation for Parks and Lands (“IFPL”) exchanged their first discovery requests and responses between October and December 2019. On April 10, 2020, the hearing officer in this contested matter issued *Hearing and Public Testimony Notice and Scheduling Order* (“Notice”). The Notice scheduled a hearing to be held beginning on July 20, 2020 and set revised discovery and disclosure deadlines. On May 7, 2020 Micron filed *Confidentiality Stipulation and Protective Order*. That document included a stipulation outlining how confidential information disclosed during discovery would be identified, transmitted, and protected from disclosure by the signatories to the agreement. The stipulation was signed by Micron and IFPL. The hearing officer accepted the stipulation and issued the agreement as a protective order on May 11, 2020 (“Protective Order”).

On June 1, 2020, Micron provided supplemental responses to IFPL’s first set of discovery requests. The supplemental responses were marked confidential pursuant to the Protective Order and included information withheld from Micron’s initial response due to confidentiality concerns. On June 19, 2020, all parties to this contested case were served IFPL’s *Motion to Continue Hearing and Extend Prehearing Deadlines; and Request for Status Conference* (“IFPL’s Motion to Continue”). The hearing officer held a conference with the parties via telephone on June 25, 2020 to discuss a schedule for responding to the prehearing motion. As a result of that discussion, on the same day, the hearing officer issued *Order Shortening Time to Respond to Prehearing Motion, and Scheduling Order*. That order shortened the time to file answers to IFPL’s Motion to Continue and extended witness and exhibit disclosure deadlines from July 6, 2020 to July 10, 2020. The following day, Friday, June 26, 2020, Micron served its *Motion to Impose Sanctions against IFPL for Breach of Confidentiality Agreement and Protective Order* (“Micron’s Motion”).

Micron’s Motion asserts that IFPL’s Motion to Continue disclosed confidential information in violation of the Protective Order and that IFPL also disclosed confidential information during the June 25, 2020 telephone conference. On Monday, June 29, IFPL served on all parties *IFPL’s Response to Microns Motion for Sanctions and Notice of Filing IFPL’s Corrected Motion to Continue Hearing and Extend Prehearing Deadlines* (“IFPL’s Notice”) and served the notice on all parties. IFPL’s Notice asked that all parties served with

IFPL's Motion to Continue destroy that filing and agree to be bound by the Protective Order. IFPL marked its *Corrected Motion to Continue Hearing and Extend Prehearing Deadlines; and Request for Status Conference* ("IFPL's Corrected Motion") as confidential pursuant to the Protective Order, and served the document under seal and only to the Hearing Officer and Micron.

On June 30, 2020, IFPL served all parties its *Motion to Establish Procedures for Confidential Information* ("IFPL's Motion for Procedures").

ANALYSIS/DISCUSSION

IFPL'S MOTION TO CONTINUE

IFPL's Motion to Continue has been replaced by their Corrected Motion that was designated as confidential and was not served to all the parties to this proceeding. Although IFPL has requested that all parties agree to be bound by the Protective Order, no other parties have signed the Protective Order. Pursuant to IFPL's request to destroy the Motion to Continue, the hearing officer will consider IFPL's Motion to Continue as withdrawn and will not include it or any responses filed in response to it into the record for this contested matter. Additionally, the hearing officer will not respond to IFPL's Corrected Motion or include it or any responses filed in response to it into the record for this contested matter because it has been designated as confidential and was not served on all parties.

MICRON'S MOTION TO IMPOSE SANCTIONS

Micron asserts that IFPL disclosed information related to Micron's highly confidential business plans and future construction schedules. Micron requests that the Department impose sanctions against IFPL for Breach of the Protective Order for IFPL's disclosure of confidential information and that the Department enter a supplemental order directing the other protestants and their counsel not to disclose such information. Further, Micron requests that the Department schedule a hearing on Micron's Motion.

The hearing officer declines to impose sanctions on IFPL and declines to hold a hearing on this motion. The hearing officer finds that sanctions are not warranted. IFPL demonstrated a good-faith attempt to comply with the terms of the Protective Order and was responsive in rescinding the filing when notified that Micron asserted IFPL had not complied with the Protective Order. The Motion to Continue and any replies filed to it were never publicly distributed by the Department and will not become a part of the record in this case. Any disclosure of sensitive information appears to have been minimal, unintended, and contained within the parties to this contested case.

The other protestants to this contested case are not parties to the Protective Order. Yet, as participants in this contested case they have a high potential to be exposed, either inadvertently or out of necessity, to confidential information during the course of this proceeding. The hearing officer will separately address procedures for future use and disclosure of confidential information in this proceeding. The hearing officer declines to issue a supplemental protective order to address the information contained in IFPL's Motion to Continue.

IFPL'S MOTION TO ESTABLISH PROCEDURES FOR CONFIDENTIAL INFORMATION

IFPL's Motion for Procedure asks the hearing officer to establish procedures for treating confidential information at live prehearing proceedings and at the hearing in this matter, pursuant to the Protective Order. The hearing officer agrees that a process for handling potentially confidential information by all parties is necessary and must be in place well in advance of the hearing. The hearing officer will separately address procedures for future use and disclosure of confidential information in this proceeding.

HEARING SCHEDULE

As discussed elsewhere in this order, the hearing officer will not issue a decision on either IFPL's Motion to Continue, or IFPL's Corrected Motion. However, the hearing officer finds good cause to vacate the current hearing schedule in light of his recognition that the COVID-19 pandemic necessitates additional planning to conduct a safe, fair, and effective hearing in this matter. The hearing officer will utilize the already-scheduled hearing start date to hold a status conference to discuss a new hearing schedule. The hearing officer also anticipates discussing procedures for handling confidential information going forward, as well as timelines for additional discovery and disclosure, if necessary.

ORDER ON PREHEARING MOTIONS

Based on the foregoing, IT IS HEREBY ORDERED that Micron's *Motion to Impose Sanctions against IFPL for Breach of Confidentiality Agreement and Protective Order* is **DENIED**.

ORDER VACATING HEARING

IT IS HEREBY ORDERED that the April 10, 2020 *Hearing and Public Testimony Notice and Scheduling Order* and any remaining associated deadlines are **VACATED**.

NOTICE OF STATUS CONFERENCE

NOTICE IS HEREBY GIVEN that the hearing officer will hold a telephonic status conference in this matter on July 20, 2020, at 9:30 a.m. All parties must be present at the status conference. To participate, please dial 1-720-279-0026 at the appropriate time and enter the assigned participation code number: 126664, followed by the '#' key.

Dated this 6th day of July 2020



Nick Miller
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of July 2020, true and correct copies of the document described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

Documents Served:

- Order On Prehearing Motions, Order Vacating Hearing, And Notice Of Status Conference

MICRON TECHNOLOGY INC.
C/O KEVIN J BEATON
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BOISE ID 83702

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ADVOCATES FOR THE WEST
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Kensie Thorneycroft
Administrative Assistant 1



State of Idaho

DEPARTMENT OF WATER RESOURCES

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

July 6, 2020

MICRON TECHNOLOGY INC
KEVIN J BEATON
STOEL RIVES LLP
101 S CAPITOL BLVD STE 1900
BOISE, ID 83702-7705

RE: Application for Permit No. 63-34614

Dear Interested Parties,

Enclosed is an Order on Prehearing Motions, Order Vacating Hearing, and Notice of Status Conference for Permit No. 63-34614 in the name of Micron Technology Inc.

If you have questions regarding the enclosed documents, would like additional information, or need to further discuss the process, please feel free to contact the Western Regional Office at 208-334-2190.

Sincerely,

Kensie Thorneycroft
Administrative Assistant
Western Regional Office

Enclosures

CC:
SPF WATER ENGINEERING
STOEL RIVES LLP
IDAHO DEPT OF FISH AND GAME
SAWTOOTH LAW OFFICE
GIVENS PURSLEY LLP
BARKER ROSHOLT & SIMPSON LLP
IDAHO FOUNDATION FOR PARKS AND LANDS
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