

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

WILLIAM J. MURRAY,

Plaintiff,

v.

TXU CORP., et al.,

Defendants.

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Civil Action No. 3-03-CV-0888-P

CONFIDENTIALITY STIPULATION AND AGREED PROTECTIVE ORDER

Plaintiff William J. Murray ("Plaintiff") and Defendants TXU Corp., TXU Energy Company LLC and TXU Portfolio Management Company LP f/k/a TXU Energy Trading Company LP ("Defendants") (collectively, the "Parties") enter into and file this Confidentiality Stipulation and Agreed Protective Order (Order):

1. The term "Discovery Material" shall mean all information, tangible items, and documents produced by a party or non-party under Federal Rule of Civil Procedure 26 or in response to formal discovery (including, where applicable, its present and former officers, directors, employees, and agents) in this litigation and the contents thereof, all interrogatory responses and responses to requests for admission and the contents thereof. For purposes of this Order, "Discovery Material" shall also include any affidavit, motion, memorandum, pleading, image or other material filed with the Court or otherwise which discloses Discovery Material designated "Confidential" and retaining its confidential designation. This Order shall govern the handling of all such Discovery Material.

2. The term “Confidential Discovery Material” shall refer to all Discovery Material which in good faith has been designated by the producing entity as “Confidential” because those Discovery Materials contain Confidential Information.

- a. For purposes of this Order, “Confidential Information” is information in the possession of, prepared by, compiled by, or that is used by TXU Corp, one of its Affiliates, or Plaintiff or any business with which Plaintiff is associated and (1) is proprietary to or about, or created by TXU Corp, its Affiliates, or Plaintiff or any business with which Plaintiff is associated; (2) gives TXU Corp, its affiliates, Plaintiff or any business with which Plaintiff is associated or customers of TXU Corp, its affiliates or Plaintiff or any business with which Plaintiff is associated some competitive business advantage, the opportunity of obtaining such advantage, or disclosure of which would be detrimental to the interest of TXU Corp, its Affiliates, Plaintiff or any business with which Plaintiff is associated or customers of TXU Corp, its affiliates or Plaintiff or any business with which Plaintiff is associated; and (3) is not typically disclosed by TXU Corp, its Affiliates or Plaintiff or any business with which Plaintiff is associated or customers of TXU Corp, its affiliates or Plaintiff or any business with which Plaintiff is associated, or known by persons who are not known employed by TXU Corp, its affiliates, Plaintiff or any business with which Plaintiff is associated or their customers or the spouse of Plaintiff. Confidential Information is also information regarding former and current employees and officers of TXU Corp. and its Affiliates,

including information regarding their employment and/or termination therefrom, performance and compensation. Confidential Information shall also include information pertaining to past, current and potential transactions engaged in or considered by TXU Corp. and/or its Affiliates. Confidential Information includes all information listed in Paragraph 6(b) of the Employment Agreement between Plaintiff and TXU Energy Trading Company dated December 1, 2000 and shall exclude all information excluded therein. Confidential information shall also include any financial statements and tax information as to Plaintiff to the extent that such information has not already been publicly disclosed.

- b. For purposes of this Order, "Affiliate" shall mean any person or entity (or sub unit of an entity) that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with TXU Corp.

3. No Discovery Material designated as "Confidential" hereunder or any copy, image, excerpt or summary thereof shall be delivered or disclosed to any person except as hereafter provided. The contents of any such Confidential Discovery Material shall not be revealed except to persons authorized hereunder and except as so provided. This Order applies only to information furnished by parties and non-parties that is not otherwise publicly available.

4. All Confidential Discovery Material produced in discovery shall be used only for the prosecution and/or defense of this action or related actions, and any person in possession of Confidential Discovery Material shall maintain those materials in a reasonably secure manner so as to avoid disclosure of their contents.

5. Unless otherwise provided herein, the “Confidential” designation set forth in this Order must be made at or prior to the time of production of documents by, to the extent possible, stamping the word “Confidential” on the first page of the Discovery Materials to be deemed Confidential. Information provided in electronic format, to the extent possible, should be designated as “Confidential” by correspondence between counsel. Discovery Material produced prior to entry of this Order may be designated as “Confidential” by referencing the bates-label of such information in correspondence between counsel or, if the material contains no bates-label, by describing the information in correspondence between counsel.

6. A party who has received Discovery Material (the “Receiving Party”) that is designated as “Confidential” and who objects to the designation of any Discovery Material as Confidential Discovery Material, shall notify counsel for the Producing Party in writing of its objection. The Producing Party and the objecting Receiving Party shall attempt to resolve all objections by agreement. If any objections cannot be resolved by agreement, the Producing Party shall have twenty (20) business days from the time in which the Receiving Party delivers its written objection to apply to the Court for a determination as to whether the Confidential designation is appropriate. Until an objection has been resolved by agreement of counsel or by order of the Court, the Discovery Material shall be treated as Confidential Discovery Material subject to this Order. In the event that a Producing Party fails to apply to the Court for a determination as to whether the Confidential designation is appropriate within twenty (20) business days of receipt of the written objection, the Discovery Material to which the Receiving Party objected shall be treated as non-Confidential.

7. No Receiving Party shall disclose, summarize, describe, characterize, or otherwise communicate Confidential Discovery Material except as permitted by this Order. Confidential

Discovery Material shall not be disclosed, summarized, described, characterized, or otherwise communicated in any way to anyone except:

- a. The Court, all Court personnel (including all court reporters employed by the Court and all mediators) and the jury;
- b. Court reporters employed in connection with this action;
- c. Counsel of record in this action, and attorneys, paralegals and other persons employed or retained by such counsel who are assisting in the conduct of this action;
- d. Plaintiff and Defendants, including current and former officers, directors and employees of Defendants;
- e. Actual and potential witnesses and deponents (and their counsel);
- f. Experts or consultants (and employees of such experts or consultants) retained or consulted for the purpose of being retained by any party in connection with this action; and
- g. Any other person, only upon order of the Court or upon all parties' written agreement. In this connection, it is Plaintiff's position that this Order should permit disclosure to counsel of record in *Richard Schwartz, et al. v. TXU Corp, et al.*, No. 3:02-CV-2243-K (the "Securities Class Action"), and attorneys, paralegals and other persons employed or retained by such counsel who are assisting in the conduct of this action, including but not limited to experts or consultants (and employees of such experts or consultants) if and when the motion filed by TXU Corp. to dismiss the Securities Class Action is denied in full. It is Defendants' position that

such disclosure should not be permitted. Agreement to this Order does not prejudice the rights of any party to seek a ruling modifying or confirming this Order consistent with his/its position.

All persons to whom Confidential Discovery Material is disclosed pursuant to Paragraphs 8(d)-(g) above shall, prior to disclosure: (i) be advised that the Discovery Material is being disclosed pursuant to and subject to the terms of this Order and may not be disclosed other than pursuant to the terms hereof; and (ii) expressly agree to be bound by the terms of the Order. Execution of a certification in the form attached as Exhibit A shall evidence such notification and agreement.

8. All documents of any nature, including briefs, that contain or refer to Confidential Discovery Material, or information contained therein or derived therefrom, and that are filed with the Court shall be filed under seal in accordance with Local Rule 79.3 in sealed envelopes marked with the style and number of this action and bearing a statement substantially in the following form:

**CONFIDENTIAL**

**FILED UNDER SEAL PURSUANT TO A PROTECTIVE ORDER DATED \_\_\_\_\_, 2004, GOVERNING CONFIDENTIALITY OF DOCUMENTS AND INFORMATION OBTAINED DURING THE COURSE OF THIS LITIGATION.**

**THIS ENVELOPE IS NOT TO BE OPENED NOR THE CONTENTS THEREOF DISPLAYED OR REVEALED EXCEPT BY OR TO QUALIFIED PERSONS OR BY COURT ORDER.**

A copy of this Order shall be presented to the clerk of court with any such document in accordance with Local Rule 79.3(a)(2). All such documents so filed shall be released from confidential treatment by the clerk of the court upon this Order's expiration or as provided in Local Rule 79.4.

9. Nothing in this Order will be construed as limiting Plaintiff's or Defendants' right to object to any discovery or to object to the authenticity or admissibility of any evidence.

10. This Order will continue to be binding throughout and after the final disposition of this action. Within ninety days after receiving notice of the entry of an order, judgment or decree finally disposing of this action, all persons having received Confidential Discovery Material will either return all Confidential Discovery Material and any copies thereof (including summaries and excerpts) to the opposing Party's attorney or destroy all such Confidential Discovery Material and certify in writing the opposing Party's attorney to that fact.

11. This Order shall not be construed to affect in any way the use, presentation, introduction or admissibility of any document, testimony, or other evidence at a deposition, trial or hearing in this litigation.

12. Nothing in this Order shall operate to require the production of documents, testimony, and other materials and information that are privileged or otherwise protected from discovery.

13. If any Receiving Party to this Agreement (a) is subpoenaed in another action, or (b) is served with a demand in another action to which he or it is a party, or (c) is served with any other legal process by one not party to this litigation seeking Confidential Discovery Material, the Receiving Party shall give written notice of such subpoena, demand, or legal process to the Producing Party within five (5) business days of receipt, and shall not produce any Discovery Material, unless Court-ordered, for a period of at least five (5) business days after providing the required notice to Producing Party. If, within five business (5) days of receiving such notice, the Producing Party gives notice to the Receiving Party that the Producing Party opposes production of its Confidential Discovery Material, the Receiving Party shall not thereafter produce such

Confidential Discovery Material except pursuant to a Court order requiring compliance with the subpoena, demand, or other legal process. The Producing Party shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the Receiving Party to challenge or appeal any order requiring production of Confidential Discovery Material covered by this Order, or to subject himself or itself to any penalties for compliance with any legal process or order, or to seek any relief from this Court. Nothing herein shall prohibit the Receiving Party from producing Confidential Discovery Material to any law enforcement or governmental agency which is within the scope of such agency's request and after providing at least five (5) business days' notice to the Producing Party and after providing the Producing Party at least five (5) business days to object to such production.

14. The provisions of this Order may be modified upon written agreement of the parties and non-party respondents to discovery or upon application to this Court for good cause shown.

Signed this 17<sup>th</sup> day of June, 2004.

  
UNITED STATES DISTRICT JUDGE

**AGREED:**

**HUNTON & WILLIAMS LLP**

By:   
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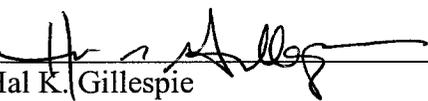
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**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**WILLIAM J. MURRAY,**

**Plaintiff,**

**v.**

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**Civil Action No. 3-03-CV-0888-P**

I hereby certify my understanding that Discovery Material, or information contained therein or derived therefrom, is being provided to me pursuant to the terms and restrictions of the Confidentiality Stipulation and Agreed Protective Order (the "Order") entered by the United States District Court for the Northern District of Texas. I further certify that I have read the Order, I understand the terms of the Order, I agree to be fully bound by the Order, and I hereby submit to the jurisdiction of the Court for purposes of enforcement of the Order.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_