

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

No. UE-151871 and UG-151872
(Consolidated)

**PUGET SOUND ENERGY'S
OPPOSITION TO COMMISSION
STAFF'S MOTION FOR AN
EXEMPTION TO THE RULE
ESTABLISHING TIMING FOR
MOTIONS FOR SUMMARY
DETERMINATION**

I. INTRODUCTION AND RELIEF REQUESTED

1 This opposition addresses only the procedural issue raised in Commission Staff's ("Staff") Motion For Summary Determination.¹ Specifically, Puget Sound Energy ("PSE") opposes Staff's request for an exemption to WAC 480-07-380(2)(b) which requires a motion for summary determination to be filed at least thirty days before the next scheduled hearing. Staff's motion is not in the public interest; the Commission should accept Staff's offer and "dismiss Staff's motion as untimely."²

2 Two and a half weeks before the hearing scheduled for August 1, 2016, Staff files a Motion for Summary Determination, asking the Commission to reject PSE's proposed Schedule 75. In lieu of its violation of WAC 480-07-380(2)(b) for failing to comply with the timing rules for a motion for summary determination, Staff asks the Commission for an exemption to the rule, and asks that the Commission rule on an expedited basis, the merits of a

¹ PSE reserves the right to fully respond to the substantive issues raised in Staff's Motion for Summary Determination, should the Commission decide not to dismiss Staff's motion as untimely.

² *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Dockets, UE-151871 & UG-151872, Commission Staff's Motion For Summary Determination, ¶ 15 (July 13, 2016)* ("If the Commission finds a full hearing on all of the details of the Company's proposal would facilitate its review of PSE's deficient filing, then it should dismiss Staff's motion as untimely.").

complex case that has been ongoing for ten months, before a complete exploration of the facts or full legal argument.

3 Staff’s reasons for asking for an exemption to the rule are wholly inadequate and are not consistent with the public interest. First, Staff’s first alleged basis for why PSE’s tariff should be rejected—that PSE’s proposed tariff does not qualify as a utility service under Washington law—is an issue that Staff could have raised ten months ago when PSE first proposed its tariff, yet it waits until now to argue that PSE’s tariff should be rejected on that basis. Second, Staff’s suggestion that an exemption is warranted because it believes that PSE has not demonstrated that its rates are fair, just, and reasonable, before the evidentiary hearing, is not a sufficient basis by which to grant an exemption. Only the Commission can determine whether PSE has met its factual burden and Staff’s position on the matter is not grounds for skirting the rules. Third, Staff’s suggestion that the procedural schedule “precluded Staff from complying” is simple untrue. It was Staff who after months of settlement negotiations, repeated meetings with PSE, and after numerous discovery requests, requested that the case be delayed and presented to the full Commission. In doing so, Staff consented to the current schedule. And Staff’s suggestion that summary determination “was not warranted prior to receipt of the Company’s rebuttal testimony” is simply wrong since most of Staff’s grounds for seeking summary determination have been known to Staff for months and were argued by Staff in its response testimony before PSE even filed its rebuttal testimony.

4 The fact that Staff now asks for summary determination on an expedited basis, on issues that could have been raised months ago, is entirely inconsistent with the public interest, is prejudicial to PSE, and would deprive PSE of the opportunity for a full hearing on the merits. Staff’s request for an exemption to WAC 480-07-380(2)(b) should be denied and Staff should

not be permitted to file a motion for summary determination only days before a hearing it specifically requested.

II. STATEMENT OF FACTS

5 On September 18, 2015, PSE filed tariff revisions to WN U-60 Schedule 75 and WN U-2
Schedule 175 to offer electric and natural gas equipment lease services to customers. On
November 13, 2015, the Commission suspended the tariff.

6 On February 17, 2016, in response to specific requests from Staff and other parties, PSE
filed a revised tariff updating the tariff with monthly lease rates and various other terms. No
party objected to PSE's revised tariff and in fact, PSE's filing of its revised tariff was
specifically consented to by all parties and incorporated into the negotiated case schedule
ordered by Administrative Law Judge Gregory J. Kopta.³

7 Consistent with the schedule, on February 25, 2016, PSE filed 87 pages of direct
testimony from four PSE witnesses in support of its proposed leasing service. On April 25,
2016,⁴ PSE filed revisions to its direct testimony and exhibits to (1) correct a calculation error
in its public benefits model consistent with a data request response provided to parties on
March 25, 2016, and (2) to correct, as Staff notes, "minor" changes to its testimony. Neither
Staff, nor any other party, objected to PSE's revisions.

³ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Dockets, UE-151871 & UG-151872, Order 02 (Jan. 7, 2016) (Appendix B).*

⁴ Staff incorrectly stated that PSE filed its revisions on March 25, 2016, which is the date of the data request response in which PSE notified parties of the correction. *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Dockets, UE-151871 & UG-151872, Commission Staff's Motion For Summary Determination, ¶ 5.* In other words, parties were aware of this revision to the evidence since March 25 and did not object to PSE revising its testimony to reflect this change.

8 On Staff's initiative, on April 27, 2016, PSE and the other parties consented to have the case heard before the entire Commission, which request the Commission granted.⁵ In light of the "significant public policy issues" relating to PSE's proposed service,⁶ Staff believed that the Commission should determine the merits of the case and asked that the parties join its motion "as it presents significant policy issues for resolution by the Commission."⁷

9 On June 7, 2016, Staff, Public Counsel, and the Intervenors filed 228 pages of testimony from nine witnesses, including three Staff witnesses.⁸ Collectively, the number of witnesses more than doubled PSE's witnesses and the collective pages nearly tripled PSE's testimony. Staff's three witnesses alone filed over 100 pages of testimony, by far the most of any party, and more than PSE's original testimony. Given the other parties' "voluminous" filings, PSE had no choice but to respond accordingly.

10 On July 1, 2016, PSE filed 164 pages of rebuttal testimony, a proportional response to Staff and the other parties' lengthy testimony. As part of its testimony, PSE also included a list of commitments as an offering to the Commission of proposed conditions that PSE would commit to as part of Schedule 75.

III. STATEMENT OF ISSUES

11 This response addresses only the procedural issue raised in Staff's Motion For Summary Determination: Specifically, it addresses whether Staff's request for an exemption to WAC 480-07-380(2)(b) establishing the timing for filing a motion for summary determination in in the public interest.

⁵ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Dockets, UE-151871 & UG-151872, Joint Motion Requesting the Commissioners Hear and Decide Case (Apr. 26, 2016).*

⁶ *Id.* ¶ 3.

⁷ *Id.* ¶ 6.

⁸ This does not include exhibits. The other parties filed over 700 pages of exhibits, totaling nearly 1,000 pages of response testimony.

IV. ARGUMENT

12 The evidentiary hearing in this matter is set for August 1, 2016, which is nineteen days after Staff filed its Motion for Summary Determination. Staff has not satisfied the legal standard justifying an exemption to the rule provided in WAC 480-07-380(2)(b). As conceded by Staff, a party must file any motion for summary determination at least thirty days before the next applicable hearing session. The responding party is then granted twenty days to respond to the motion. The Commission may grant an exemption from or modify the application of its rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes pursuant to WAC 480-07-110(1). Staff has not cited any underlying regulation or applicable statute justifying its request for an exemption. Staff's motion relies solely on the public interest exception. However, none of the grounds cited by Staff supporting its motion demonstrate public interest. It is not consistent with the public interest to allow Staff to circumvent the evidentiary hearing process, at the eleventh hour, when the primary issue it raises was known and could have been raised several months earlier. It is not in the public interest to take this case away from the Commission to decide based on the evidence, when Staff expressly pushed for the Commission to hear the case due to important policy issues that are raised in the case.⁹

13 First, Staff's primary argument, that PSE's tariff should be rejected because PSE's proposed leasing service is not a utility service as a matter of law, is not a sufficient basis by which to grant Staff an exemption to the Rule. Staff could have raised this issue ten months ago when PSE filed its tariff, or five months ago when PSE filed its revised tariff. The fact that Staff has waited until less than three weeks before the hearing to raise this issue is not a

⁹ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets, UE-151871 & UG-151872, Joint Motion Requesting the Commissioners Hear and Decide Case.

sufficient basis by which to grant an exception to the rule. If anyone has wasted the parties' time, it is Staff for failing to raise this issue sooner. Indeed, at minimum, Staff could have filed this motion in June when it filed its testimony where it made these very same arguments in its response testimony. Instead, it waits until now to file a dispositive motion on positions it has taken for months. This is not a justifiable basis for skirting the Commission's rules.

14 Second, Staff argues that it should be granted an exception to the rule because it believes that PSE has not provided sufficient factual basis for its proposed program and that multiple days of hearing and rounds of briefing would be “a tremendous waste of time and resources for all involved.”¹⁰ But the fact that Staff believes PSE has not provided sufficient evidence to establish its proposed rates are just and reasonable—a position that PSE strongly disagrees with—is not Staff's decision, it is the Commission's. Thus, Staff's suggestion that an exemption to the rule is appropriate because it believes PSE has not provided sufficient factual evidence is circular since this is a decision that only the Commission can make. Staff, apparently, would now like to take the factual decision out of the hands of the Commission before a complete factual record is compiled when it was Staff who expressly requested that the Commission hear this case and resolve the issues on the merits. Believing that your position is correct is not grounds for ignoring Commission rules. And Staff's apparent concern over PSE's offered commitments and compliance filing is inapposite. PSE's proposal, as initially filed, is sufficient to demonstrate that the rates are fair, just, reasonable and sufficient. However, PSE has gone a step further in its rebuttal by making additional commitments that it is willing to abide by if the tariffs are approved. These additional commitments, for the benefit of customers, should not be grounds for dismissal of PSE's case.

¹⁰ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets, UE-151871 & UG-151872, Commission Staff's Motion for Summary Determination, ¶ 16.

Moreover, PSE's list of commitments are primarily a reiteration of offerings PSE has made to Staff for months. They are not new to Staff, nor do any go to the actual fundamental merits of the program and are mere proposals for the Commission's consideration.

15 Third, Staff's suggestion that the procedural schedule precluded Staff from complying with the timing requirement is simply incorrect. All parties consented to the schedule and specifically negotiated the terms. Moreover, Staff's suggestion that "[s]ummary determination was not warranted prior to receipt of the Company's rebuttal testimony"¹¹ is entirely inconsistent with the very grounds by which Staff seeks summary determination including (1) that PSE's leasing proposal is not a utility function as a matter of law and (2) PSE has not demonstrated that its rates are fair, just, and reasonable, because Staff made those exact arguments in its response testimony filed in June. Thus, before PSE even filed its rebuttal testimony, Staff already believed that PSE's proposal should fail for the grounds stated in its motion and it could have filed its motion six weeks ago.

16 Finally, Staff's suggestion that granting an exemption to the timing rule would not prejudice PSE is impossible to understand. PSE is in the process of responding to data requests and diligently preparing for the hearing which is less than three weeks away. It is indisputable that requiring PSE to also respond to a dispositive motion on a shortened time schedule would harm both PSE's ability to adequately prepare for the hearing and respond to Staff's motion.

17 Moreover, Staff suggestion that PSE's has "supported its proposed leasing service in a manner that compromises review"¹² is disingenuous. PSE has made every effort to accommodate Staff's numerous requests for working sessions, data requests, and impromptu

¹¹ *Id.* ¶ 17.

¹² *Id.* ¶ 18.

questions about PSE's proposal. If Staff objected to PSE's filing its revised tariff in February it could have objected then, but it didn't. If Staff objected to PSE's filing errata testimony in April, it could have objected then, but it didn't. And PSE's offered "commitments" in its rebuttal testimony are not new to Staff.

18 Given that this case has been ongoing since September, that hundreds of data requests have been served and responded to, that all parties have filed detailed testimony and exhibits, and that the parties (including and specifically Staff) have requested the Commission hear the case, and that the hearing is only a few weeks away, it is in the public's interest to allow the case to proceed as scheduled to facilitate a full exploration of the facts. An expedited time schedule for briefing a complex matter, with numerous factual issues, is not an appropriate way to resolve a case of this magnitude and certainly is not in the public interest. Given that the public will be directly impacted by whether PSE's proposal moves forward, the appropriate process is to allow a full hearing on the merits as has been scheduled for months, instead of deciding it on a dubious motion at the eleventh hour.

V. CONCLUSION

19 For the reasons set forth above, PSE respectfully requests that the Commission deny Staff's motion for an exemption from WAC 480-07-380(2)(b) and dismiss Staff's motion as untimely.

Respectfully submitted this 14th day of July, 2016.

PERKINS COIE LLP

By: 

Sheree S. Carson, WSBA No. 25349

David S. Steele, WSBA No. 45640

The PSE Building

10885 N.E. Fourth Street, Suite 700

Bellevue, WA 98004-5579

Telephone: 425.635.1400

Facsimile: 425.635.2400

Email: SCarson@perkinscoie.com

Email: DSteele@perkinscoie.com

Attorneys for Puget Sound Energy