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September 19, 2012

VIA ELECTRONIC FILING & ABC LMI

David Danner
Executive Director and Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
P. O. Box 47250
Olympia, WA 98504-7250

Re: WUTC v. PSE
Docket U-111465

Dear Mr. Danner:

Enclosed please find the originals and three (3) copies of the Motion of Public Counsel to Extend Discovery to Reflect New Hearing Date for filing in the above entitled docket.

Sincerely,

LISA W. GAFKEN
Assistant Attorney General
Public Counsel Division
(206) 464-6595

SJf:cjw
Enclosures

cc: Service List (E-mail and U S Mail)

CERTIFICATE OF SERVICE
Docket No. U-111465

I hereby certify that a true and correct copy of the Motion of Public Counsel to Extend Discovery to Reflect New Hearing Date was sent to each of the parties of record shown below in sealed envelopes, via: First class mail and E-Mail.

SERVICE LIST


**** = Receive Highly Confidential; * = Receive Confidential; NC = Receive Non-Confidential**

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DATED: September 19, 2012.


CAROL WILLIAMS
Legal Assistant

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKET U-111465

MOTION OF PUBLIC COUNSEL
TO EXTEND DISCOVERY TO
REFLECT NEW HEARING DATE

1. Pursuant to WAC 480-07-375(b), the Public Counsel Section of the Washington Attorney General's Office (Public Counsel) files this Motion to Extend Discovery to Reflect New Hearing Date to correct a scheduling anomaly resulting from the two continuances in this matter.

I. RELIEF REQUESTED

2. Public Counsel urges the Commission to correct the procedural schedule in this matter to extend the discovery cutoff to reflect the current hearing schedule. Doing so would extend the discovery cutoff from August 24, 2012, to October 5, 2012. Public Counsel respectfully requests expedited consideration of this motion because it addresses discovery deadlines and the hearing is scheduled for October 23, 2012.

II. STATEMENT OF ISSUES

3. Whether the Commission should correct the current procedural schedule to reflect a discovery cutoff date consistent with the timelines established in the original procedural schedule when the Commission granted two continuances extending both filing and hearing dates, when the discovery cutoff date was originally 18 days prior to the original hearing date, and when the discovery cutoff date was not modified along with the filing dates and evidentiary hearing date.

4. Whether the Commission should consider this motion on an expedited basis to allow Parties to proceed with discovery and prepare for the evidentiary hearing.

III. STATEMENT OF FACTS AND ARGUMENT

5. The Washington Utilities and Transportation Commission (Commission) by and through its Staff filed a complaint against Puget Sound Energy, Inc. (PSE or Company) on December 14, 2011, alleging violations resulting from improperly charging customers disconnect visit fees for visits the Company conducted with no intention to disconnect. A prehearing conference was held on February 9, 2012, at which time a procedural schedule was developed. The procedural schedule, which was adopted by the Commission in Order 01, contemplated pre-filed testimony and exhibits from Parties to be filed on June 1, July 6, and August 3, 2012, and an evidentiary hearing on September 11, 2012.¹ Settlement conferences were scheduled for March 22, 2012 and August 13, 2012.²

6. The Commission also ordered discovery be available in this proceeding, finding that the proceeding met the criteria set forth in WAC 480-07-400(2)(b).³ In Appendix B to Order 01, the Commission noted in Footnote 2 that discovery responses were due five business days from the request after PSE filed its Pre-filed Responsive Testimony and Exhibits on July 6, 2012. Footnote 2 also stated that the discovery process shall close on August 24, 2012,⁴ 18 calendar days prior to the evidentiary hearing.

¹ Order 01 at ¶ 6 and Appendix B.

² *Id.*

³ Order 01 at ¶ 8.

⁴ Order 01, Appendix B, n.2.

7. The Parties filed two Joint Motions for Continuance, both requesting extensions of testimony deadlines and the evidentiary hearing schedule.⁵ The purpose of both Joint Motions was to allow Parties to continue negotiations to attempt to resolve this matter through settlement.
8. The Commission granted both Joint Motions and continued the procedural schedule twice. Neither the Joint Motions, nor the Commission's Notices granting the Motions, mention the discovery cutoff date.
9. The first continuance created filing dates of June 22, July 27, and August 24, 2012 and an evidentiary hearing date of September 11, 2012.⁶ Under this schedule, no discovery would have been available after rebuttal testimony and exhibits were filed, even though discovery would have been available for three weeks after the rebuttal was filed under the original schedule.
10. The second continuance extended the rebuttal filing to September 7, 2012, two weeks after the original August 24, 2012, discovery cutoff, and established a hearing date of October 23, 2012.⁷
11. The original schedule clearly contemplated discovery being available between the time the last round of testimony and exhibits were filed and the start of the evidentiary hearing. Indeed, the original schedule provided for three weeks of discovery after the last round of testimony and established a cutoff date that was 18 days prior to the evidentiary hearing. Extending the filing dates and the hearing date without extending the discovery cutoff date has the unintended effect of disadvantaging Parties in their ability to obtain germane information.⁸

⁵ Joint Motion for Continuance of the Procedural Schedule, May 24, 2012; Second Joint Motion for Continuance of the Procedural Schedule, August 17, 2012.

⁶ Notice Granting Motion for Continuance, May 25, 2012.

⁷ Notice Granting Second Motion for Continuance, August 20, 2012.

⁸ The Parties did not discuss the discovery cutoff deadline when the Joint Motions were filed.

12. To reflect the timeframes established by the Commission in Order 01, the discovery cutoff in this matter should be October 5, 2012. This date is 18 days prior to the evidentiary hearing. The Commission should further confirm that the five-day response time established in Order 01 is in effect. Establishing October 5, 2012, as the discovery cutoff and confirming the five-day response time is consistent with the Commission's authority under WAC 480-07-400(4), which specifically provides that the presiding officer may modify discovery time limits to the extent necessary to conform to the Commission's hearing schedule.

13. The issue of the discovery cutoff arose when Public Counsel submitted 13 Data Requests to PSE on September 17, 2012. PSE indicated that it would not respond based on the discovery cutoff date established in Order 01. Public Counsel attempted to informally resolve the issue; however, Public Counsel and PSE were not able to come to agreement.

IV. CONCLUSION

14. For the reasons stated above, Public Counsel respectfully requests that the Commission extend the discovery cutoff in this matter to October 5, 2012, and confirm that responses are due within five business days of the request. This would provide the same timeframes as in the original procedural schedule. Public Counsel further requests expedited consideration of this Motion to allow for meaningful discovery prior to the evidentiary hearing and opportunity to

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prepare for hearing. Public Counsel understands that Commission Staff does not oppose this Motion.

15. DATED this 19th day of September, 2012.

ROBERT M. McKENNA
Attorney General



LISA W. GAFKEN
Assistant Attorney General
Public Counsel