

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UE-220066 and  
UG-220067 (*consolidated*)

REBUTTAL STATEMENT OF  
COMMISSION STAFF TO NOTICE  
OF POTENTIAL EX PARTE  
COMMUNICATION

1 Pursuant to WAC 480-07-310(4), Staff of the Washington Utilities and Transportation Commission (Commission) files this rebuttal statement to the Notice of Potential Ex Parte Communication (Notice) filed in these consolidated dockets March 25, 2022. Under the Administrative Procedure Act, a presiding officer may not communicate with a party without notice and opportunity for all parties to participate “unless necessary to procedural aspects of maintaining an orderly process.” RCW 34.05.455. The communication described in the Notice addressed procedural aspects of maintaining an orderly process and was not a prohibited ex parte communication.

2 As described in the Notice, the Commission provided the parties with notice and an opportunity to respond to Kroger’s petition to intervene but did not follow the same procedure with respect to Front and Centered’s petition to intervene. Following one process for one party’s petition and a different process for another party’s petition is inconsistent with maintaining an orderly process and unfair to the parties. A process is not orderly if parties cannot rely on consistent procedure. Commission Staff’s (Staff’s) communication with the presiding officer addressed the problem of the inconsistent procedure that the Administrative Law Judge (ALJ) had followed in adjudicating the two petitions. In the communication, there was no discussion of substantive issues, of the merits of the

proceeding, or of any request for action. Staff did not seek any change in outcome. In short, Staff Counsel's communication was a permissible ex parte communication that did not need to be disclosed. *See* RCW 34.05.455; WAC 480-07-310(2); OAH Code of Ethics for Administrative Law Judges adopted January 21, 2022, Canon 2(B)(7).

3           The Commission's procedural rule on intervention does not include a deadline for responses to late-filed petitions to intervene. WAC 480-07-355. When Kroger filed its late-filed petition to intervene, the ALJ had a choice of approaches under the rule. The ALJ chose to issue a notice of opportunity to respond. When another party filed a late-filed petition to intervene, it was reasonable for the parties to expect the same process that the ALJ followed for the Kroger petition. But the ALJ did not follow the same process and provided no explanation for the discrepancy. This kind of arbitrariness looks like favoring one party over another and ultimately affects the credibility of the Commission.

4           Regardless of the intent of the ALJ, two parties in the same case, which had both filed late-filed petitions to intervene, were treated differently. It is vital, at the very least for maintaining an orderly process, that the Commission adhere to consistent procedure among the parties in its proceedings.

DATED March 25, 2022.

Respectfully submitted,

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