

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.

Respondent.

DOCKET NO. U-111465

PSE'S OPPOSITION TO PUBLIC
COUNSEL'S MOTION TO EXTEND
DISCOVERY

I. INTRODUCTION

1. Puget Sound Energy, Inc. ("PSE") respectfully submits to the Washington Utilities and Transportation Commission ("the Commission") this response opposing Public Counsel's Motion to Extend Discovery filed September 19, 2012. Public Counsel's motion should be denied because discovery in this proceeding closed on August 24, 2012 and Public Counsel has not demonstrated good cause to re-open the discovery process.

II. ARGUMENT

2. Public Counsel requests that the discovery process be re-opened and extended six weeks.¹ Pursuant to WAC 480-07-385(2), Public Counsel must demonstrate good cause for the extension and must show that the extension will not prejudice any party or the Commission. Public Counsel has not shown good cause to re-open discovery, no party

¹ See Motion of Public Counsel to Extend Discovery to Reflet New Hearing Data ("Public Counsel's Motion") at ¶ 2.

supports Public Counsel's request, and granting a third continuance in this proceeding is unnecessary and would prejudice PSE.

A. Public Counsel was aware of the discovery cutoff and had ample opportunity to request a new deadline.

3. Public Counsel presents the discovery cutoff as a "scheduling anomaly" that requires "correction".² But no such anomaly exists, nothing needs to be "corrected", and Public Counsel's Motion is simply the result of its failure to heed a deadline. Public Counsel, Commission Staff, and PSE (collectively, "Parties") each participated in establishing the discovery cutoff at this proceeding's February 9, 2012 prehearing conference. All Parties had an adequate opportunity to confer regarding the procedural schedule, and all Parties agreed to the August 24, 2012 discovery cutoff.³

MR. FASSIO: We've also agreed regarding discovery that the typical -- well, the typical response deadline applies; however, following the first round of testimony, July 6, we agreed on a shortened time frame for response to discovery of five business days and a discovery cutoff of August 24th.

JUDGE CLARK: All right. The schedule proposed by the parties is reasonable, and I will adopt it.⁴

Judge Clark even requested further clarification later in the prehearing conference, "[A]ll discovery would cease on August 24th, is that right?" Mr. Fassio, counsel for Commission Staff, responded for the parties with, "Yes".⁵ A copy of the prehearing transcript is attached

² *Id.* at ¶ 1.

³ *See* Clark and Fassio, TR: 8:11-15

⁴ Clark and Fassio, TR: 9:15-22.

⁵ Clark and Fassio, TR: 10: 14-16.

hereto as Attachment A. Public Counsel also received notice of the August 24, 2012 discovery cutoff through Order 01 in this proceeding. The discovery cutoff was never represented as a certain number of days following testimony or preceding the evidentiary hearing; it was always a date certain of August 24, 2012.

4. Additionally, Public Counsel is correct that the Parties filed two joint motions requesting previous deadline extensions in this case, and Public Counsel was a party to both joint motions.⁶ Even though Public Counsel had actual knowledge of the discovery cutoff and multiple opportunities to request an extension, Public Counsel did not do so. Public Counsel obviously simply overlooked the discovery cutoff date.

B. PSE will be prejudiced if discovery is re-opened.

5. Public Counsel attempts to frame the discovery cutoff as a scheduling error that disadvantages all parties.⁷ But this is simply not true. No party, not even Public Counsel, has claimed that it has been disadvantaged or prejudiced by closure of the discovery process in this case. Even if a party were disadvantaged by the expiration of the discovery process, it would be PSE, not Public Counsel. This is because the opportunity to file the last round of testimony in this case belonged only to Commission Staff and Public Counsel, and Public Counsel did not file any testimony. Therefore, PSE is the only party that would be potentially disadvantaged by being unable to "obtain germane information" following the last round of testimony and exhibits.⁸ As stated above, neither PSE nor any other party in this proceeding has claimed that it will be disadvantaged if discovery is not re-opened.

⁶ See Public Counsel's Motion at ¶ 7.

⁷ See Public Counsel's Motion at ¶ 11.

⁸ Public Counsel states, "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." "Extending the filing dates and the hearing date without extending the

6. On the other hand, PSE will be prejudiced if Public Counsel's motion is granted. Public Counsel states that it recently issued thirteen data requests to PSE. However, the actual number of data requests is 29, including sub-parts. The following is an example of Public Counsel's data requests:⁹

PC-29 RE: Rayne Pearson's rebuttal testimony, Exhibit RP-10T at 6:22 – 7:2.
Please provide the following:

- a. Please provide the number of days Puget Sound Energy declared to be "non-disconnect" days between May 2, 2011 and December 31, 2011.
- b. Please identify each of the dates between May 2, 2011 and December 31, 2011, that Puget Sound Energy declared to be "non-disconnect" days.
- c. For each date identified, provide the reason(s) Puget Sound Energy decided it would not disconnect customers on that date.
- d. For each date identified, provide the number of collection visits to customer premises made by field representatives.
- e. For each date identified, state whether customers received an erroneous \$13 disconnection visit fee, and if so, how many.

Attached hereto as Attachment B is a copy of Public Counsel Data Request No. 29. It is clear that these requests have nothing to do with the referenced testimony of Ms. Pearson, and they could have been asked anytime before August 24, 2012.

7. Public Counsel does not claim that it was unable to issue its requests during the discovery period in this proceeding, and it does not claim that it will be prejudiced if it does

discovery cutoff date has the unintended effect of disadvantaging Parties in their ability to obtain germane information." *Id.*

⁹ In what can only be described as a transparent attempt to connect the data request to rebuttal testimony, Public Counsel Data Request No. 29 references the following two sentences from Commission Staff's rebuttal testimony: "Moreover, Staff is very concerned not only that this practice has been going on for years, but that it continues. Even if, as the Company contends, it no longer inappropriately charges \$13 each time it engages in this behavior, the behavior itself is arguably harmful to consumers." Pearson, Exh. No. RP-10T at 6:22-7:2.

not receive responses to these or future data requests. Public Counsel merely requests that discovery be extended in order to conform to the initial schedule issued in February.¹⁰ Such extension is not necessary, and Public Counsel's request does not demonstrate good cause to issue what would be the third continuance in this proceeding. PSE is the party who will be prejudiced if the Commission grants Public Counsel's motion, even though it was Public Counsel's oversight in failing to heed the discovery cutoff.

III. CONCLUSION

8. Re-opening discovery and granting a third continuance in this proceeding is not necessary or beneficial. Rather, it will prejudice PSE because it will require PSE to shift resources from preparing for hearing to answering data requests that Public Counsel could have asked prior to expiration of the discovery cutoff. For these reasons and the reasons set forth above, PSE respectfully requests that Public Counsel's motion be denied.

DATED this 24th day of September, 2012.

Respectfully Submitted,

PERKINS COIE LLP



Donna L. Barnett, WSBA #36794
Attorneys for Puget Sound Energy, Inc.

¹⁰ "To reflect the timeframes established by the Commission in Order 01, the discovery cutoff in this matter should be October 5, 2012." Public Counsel's Motion at ¶ 12.

Attachment A

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1

BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)

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Complainant,)

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vs.)

) Docket U-111465

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PUGET SOUND ENERGY, INC.,)

) Pages 1-12

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Respondent.)

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PREHEARING CONFERENCE, VOLUME I

11

PAGES 1-12

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ADMINISTRATIVE LAW JUDGE PATRICIA CLARK

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10:00 A.M.

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FEBRUARY 9, 2012

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Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504-7250

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A P P E A R A N C E S

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* * * * *

0003

1 OLYMPIA, WASHINGTON; FEBRUARY 9, 2012

2 10:00 A.M.

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4 P R O C E E D I N G S

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6 JUDGE CLARK: Good morning. It's approximately 10
7 a.m. February 9, 2012, in the Commission's hearing room in
8 Olympia, Washington. This is the time and the place set for a
9 prehearing conference in the matter of Washington Utilities and
10 Transportation Commission vs. Puget Sound Energy, given Docket
11 No. U-111465. Patricia Clark, Administrative Law Judge for the
12 Commission, presiding.

13 This matter came before the Commission on December
14 14th, 2011, when the Washington Utilities and Transportation
15 Commission filed a complaint against Puget Sound Energy
16 alleging as many as 1,639 violations of Commission's rules by
17 charging a disconnection visit charge for visits other than for
18 the purpose of actual disconnection.

19 On December 30, 2011, Puget Sound Energy filed its
20 answer to the complaint. By notice issued on January 5, 2012,
21 the Commission set the prehearing conference for this date,
22 time and place.

23 At this time, I'll take appearances on behalf of the
24 parties.

25 Appearing on behalf of the Commission Staff?

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1 MR. FASSIO: Michael Fassio, Assistant Attorney
2 General.

3 JUDGE CLARK: Thank you, Mr. Fassio.

4 Appearing on behalf of Puget Sound Energy?

5 MR. KUZMA: Jason Kuzma for Perkins Coie.

6 JUDGE CLARK: Thank you, Mr. Kuzma.

7 Appearing on behalf of Public Counsel?

8 MR. FFITCH: Good morning, Your Honor. Again, Simon
9 ffitch on behalf of the Public Counsel Office.

10 JUDGE CLARK: Thank you.

11 Are there any other individuals on the bridge line
12 who wish to be identified at this time? Apparently not.

13 All right. Then I will move directly to the
14 business at hand today. Of course the primary purpose of
15 today's prehearing conference is to establish a procedural
16 schedule in this matter, but I would like to address first the
17 issue of consolidation.

18 In its notice of prehearing conference, the
19 Commission indicated that one topic for discussion this morning
20 is whether it would be an efficient use of party and Commission
21 resources to consolidate this matter for hearing with another
22 outstanding PSE complaint in Docket U-110808, and so I would
23 like to hear from the parties first on that topic because of
24 course that would impact the procedural schedule. Mr. Fassio?

25 MR. FASSIO: Thank you, your Honor.

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1 First I'll preface by saying that Staff generally
2 does support efforts to consolidate time and resources where
3 it's appropriate. I'm not assigned to represent Staff in the
4 other complaint case that's referred to, so I personally won't
5 recognize any efficiencies on my part and can't speak for that
6 case. Mr. Kuzma could certainly speak on behalf of his role in
7 that.

8 Staff is not advocating for consolidation at this
9 time. Frankly, I don't see compelling reasons in this case to
10 do so. The two cases are -- they're different. They involve
11 different issues, facts, unrelated issues of facts and law.
12 They're both based on independent investigations, and the
13 outcome of one would not really affect the outcome of the
14 other.

15 Another issue that Staff sees arguing against
16 consolidation relates to the timing of the two cases. That
17 case precedes this one by a couple of months and it's on its
18 own track, and consolidating the two cases at this time could
19 impede the -- perhaps impede the resolution of that one, or
20 potentially impede the resolution of this one were this one
21 separate. So there are some concerns there.

22 So I guess as a threshold matter, it's the unrelated
23 issues of law and fact that argue against consolidation in this
24 case, as well as Staff doesn't see any particular
25 administrative resources and timing issues that would benefit

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1 Staff to consolidate this.

2 JUDGE CLARK: Thank you, Mr. Fassio. Mr. Kuzma?

3 MR. KUZMA: PSE would agree with Staff and not support
4 consolidation of this issue. The issues of law and fact in the
5 two proceedings are different, and PSE does not see there are
6 any possibilities of efficiencies or economies to be achieved
7 through consolidation.

8 JUDGE CLARK: And Mr. Ffitch?

9 MR. FFITCH: Thank you, Your Honor. We are in
10 agreement with the Company and with Staff on this matter.

11 JUDGE CLARK: All right.

12 Well, I was hoping that it would have resulted in
13 some less work for the parties to address this in the context
14 of the other proceeding but appears that that will be difficult
15 to do so I am disinclined to consolidate these matters,
16 although I will note that while our rule requires similar
17 issues of law or fact in order to consolidate, in fact, we
18 don't typically do that. And recently we did a complaint in
19 UW-101818, if my memory serves me correctly, which was a
20 complaint against a small water company which addressed a
21 number of violations that were completely and totally unrelated
22 to each other, but they did relate to the same facts at hand,
23 and we also typically in general rate cases consolidate a
24 number of tariffs that are completely and totally unrelated.
25 That having been said, the parties are not in favor of this

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1 particular consolidation, so we'll work from that and handle
2 these as individual matters.

3 So that would move us to a procedural schedule to
4 establish in this case. Have the parties had an opportunity to
5 confer regarding the proposed procedural schedule?

6 MR. FASSIO: We have not, Your Honor. If I may
7 interject one preliminary matter before we get to the schedule,
8 it would be that Staff would request the invocation of the
9 discovery rules in this proceeding.

10 JUDGE CLARK: That's on the agenda a little bit later,
11 but we can do that now. Is there any objection to finding that
12 the discovery rules should be applicable to this case?

13 MR. KUZMA: No objection, Your Honor.

14 MR. FFITCH: No objection.

15 JUDGE CLARK: Thank you. Then the discovery rules
16 will be applicable to this proceeding, and ordinarily, the time
17 deadlines for discovery to cease is a topic that is addressed
18 within the procedural schedule, so I presume the parties will
19 also address an expedited response time after a certain point
20 in the procedural schedule.

21 Any other preliminary matters? All right.

22 Then would the parties like an opportunity to confer
23 and see if you can agree on a procedural schedule? We're
24 nodding heads affirmatively. Not picked up that great on the
25 sound system.

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1 MR. FASSIO: Staff has a framework to propose, and so
2 we're optimistic that we can reach agreement.

3 JUDGE CLARK: All right. I'm going to allow the
4 parties to discuss that procedural schedule. I will vacate the
5 hearing room. I'll be in my office, and we are at recess until
6 further call.

7 (Pause in the proceedings from
8 10:08 a.m. to 10:20 a.m.)

9

10 JUDGE CLARK: All right. We're back on the record.
11 During the recess, have the parties had an adequate opportunity
12 to confer regarding the procedural schedule?

13 MR. FASSIO: Yes, Your Honor.

14 JUDGE CLARK: And have you reached agreement?

15 MR. FASSIO: We have.

16 JUDGE CLARK: All right. If you would kindly
17 memorialize that for me on the record, Mr. Fassio.

18 MR. FASSIO: Thank you. The first date on our
19 schedule is a settlement conference, parties only, and we
20 scheduled that for March 22nd, 2012, obviously. We decided on
21 prefiled testimony and a hearing in this matter, and we have a
22 date of June 1st, 2012 for direct testimony from Staff and
23 Public Counsel.

24 JUDGE CLARK: I'm sorry, that's June 1?

25 MR. FASSIO: June 1.

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1 JUDGE CLARK: Thank you.

2 MR. FASSIO: The second date for response testimony
3 from the Company is July 6th, followed by rebuttal testimony
4 from Staff and Public Counsel on August 3rd.

5 We've tentatively agreed on a settlement -- a
6 subsequent settlement conference, if necessary, among the
7 parties for the week of August 13th. And we've all agreed for
8 a hearing date of September 11th, 2012, that's a Tuesday, and
9 we would reserve the issue of whether briefing will be
10 necessary, so we don't have a date for that.

11 JUDGE CLARK: And can you give me that evidentiary
12 hearing again? September --

13 MR. FASSIO: September 11th.

14 JUDGE CLARK: All right.

15 MR. FASSIO: We've also agreed regarding discovery
16 that the typical -- well, the typical response deadline
17 applies; however, following the first round of testimony, July
18 6, we agreed on a shortened time frame for response to
19 discovery of five business days and a discovery cutoff of
20 August 24th.

21 JUDGE CLARK: All right. The schedule proposed by the
22 parties is reasonable, and I will adopt it. I would like to
23 just run through that very quickly to make sure I have all of
24 the dates accurately entered in. The first deadline is for a
25 settlement conference. The first settlement conference is

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1 scheduled for March 22nd, 2012. The parties agreed that the
2 initial prefiled direct testimony and exhibits of Commission
3 Staff and Public Counsel will be filed on June 1st. The
4 responsive testimony of Puget Sound Energy would be July 6,
5 2012, and reply testimony would be August 3rd, 2012; is that
6 correct?

7 MR. FASSIO: Yes.

8 JUDGE CLARK: The parties had also agreed on a second
9 settlement conference, which would be convened on August 13,
10 2012. If unsuccessful, that would be followed by an
11 evidentiary hearing on September 11, 2012. The parties further
12 concurred to an expedited discovery deadline after July 6 of
13 five business days rather than the length of time provided by
14 rule, and finally that all discovery would cease on August
15 24th; is that correct?

16 MR. FASSIO: Yes.

17 JUDGE CLARK: All right. Great. Are there any other
18 matters that we need to address on the record this morning?

19 MR. FASSIO: Well, one other thing, Your Honor. I
20 don't know that we addressed whether the Company believes it
21 would be necessary to have a protective order in this
22 proceeding, so I would just address that.

23 JUDGE CLARK: Mr. Kuzma?

24 MR. KUZMA: I think it would be appropriate to have a
25 standard confidential protective order in this proceeding.

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1 JUDGE CLARK: All right. The Commission will, by
2 separate cover, issue its standard protective order in this
3 matter. For all filings, the Commission will require an
4 original and three copies.

5 Anything further?

6 MR. FFITCH: Your Honor, this is Simon ffitch for
7 Public Counsel. I just wanted to advise the Bench and the
8 parties that we are still determining our level of
9 participation. We are interested in the issues, but due to
10 resources, we may or may not be filing written testimony in the
11 case, so I just want to be clear about that up front. We'll
12 make that decision as the case progresses and let the Bench and
13 the parties know.

14 JUDGE CLARK: Thank you. Yes, if you could do that
15 via some form of filing in the record, that would be
16 appreciated, Mr. ffitch.

17 MR. FFITCH: We'll do that. Thank you, Your Honor.

18 JUDGE CLARK: Anything further?

19 Hearing nothing, we're adjourned.

20 MR. FASSIO: Thank you, Your Honor.

21 MR. KUZMA: Thank you.

22 MR. FASSIO: Thank you.

23 (Hearing concluded at 10:26 a.m.)

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C E R T I F I C A T E

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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6 I, Lisa Buell, a Certified Shorthand Reporter and Notary
7 Public in and for the State of Washington, do hereby certify
8 that the foregoing proceedings on February 9, 2012, is true and
9 accurate to the best of my knowledge, skill and ability.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal
11 this 17th day of February, 2012.

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LISA BUELL, RPR, CRR, CCR

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19 My Commission expires:

20 DECEMBER 2014

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Attachment B

To: Jason Kuzma and Donna Barnett
Re: PC Data Request Nos. 17-29 to Puget Sound Energy
Docket No. U-111465
Date: September 17, 2012
Page 6 of 6

PC-29 **RE: Rayne Pearson’s rebuttal testimony, Exhibit RP-10T at 6:22 – 7:2.**

Please provide the following:

- a. Please provide the number of days Puget Sound Energy declared to be “non-disconnect” days between May 2, 2011 and December 31, 2011.
- b. Please identify each of the dates between May 2, 2011 and December 31, 2011, that Puget Sound Energy declared to be “non-disconnect” days.
- c. For each date identified, provide the reason(s) Puget Sound Energy decided it would not disconnect customers on that date.
- d. For each date identified, provide the number of collection visits to customer premises made by field representatives.
- e. For each date identified, state whether customers received an erroneous \$13 disconnection visit fee, and if so, how many.