

**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 MOTION
TO STRIKE COMMISSION STAFF'S
OCTOBER 12, 2016 LETTER**

1 Pursuant to WAC 480-07-375(1)(d), Puget Sound Energy ("PSE") moves to strike
Commission Staff's ("Staff") letter to the Commission dated October 12, 2016, whereby Staff
offers additional evidence and arguments in support of its position in the case. Not only does
Staff submit its letter weeks after the close of the evidentiary record and briefing period
without leave from the Commission, but it offers no legally cognizable justification for its
attempt to introduce new evidence and make additional legal arguments.

I. BACKGROUND

2 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. On July 13, 2016, Staff filed a
motion for summary determination containing legal arguments for why PSE's proposed tariff
should not be permitted as a matter of law. The Commission denied Staff's motion.

3 Following evidentiary hearings on August 1 and 3, 2016, pursuant to the Commission-
ordered schedule, the parties engaged in extensive briefing. On August 30, 2016, Staff filed a
fifty-one-page initial brief in support of its position in the case, followed by a fifteen-page

reply brief on September 19, 2016. The Commission’s scheduling order did not provide the parties with the opportunity for additional briefing or supplementation of the record.

4 On October 12, 2016, without first seeking leave, Staff submitted a letter to the Commission, “inviting” the Commission to review PSE’s Schedule 80, and arguing that the language “expressly applies to PSE’s proposed Schedule 75.” Staff’s only explanation for its post-hearing submission is that it discovered the language “while researching another matter.”

II. ARGUMENT

5 Staff’s post-briefing letter containing additional evidence and legal arguments should be stricken. Under WAC 480-07-830, in a contested proceeding prior to the entry of a final order, a party may only submit additional evidence for consideration by the Commission if, following the filing of a motion, the evidence “is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause.” Staff’s letter fails to meet these requirements.

6 First, Staff did not file a motion seeking leave from the Commission before submitting additional evidence or legal arguments as required by WAC 480-07-830.

7 Second, Staff’s letter does not demonstrate how its letter contains information that is “essential” to the Commission’s decision regarding PSE’s proposed tariff. In fact, PSE strongly objects to Staff’s characterization of the tariff provision it cites and the relevance of the provision on PSE’s proposed tariff that Staff appears to be suggesting. Staff has mischaracterized the application of the tariff and if necessary, PSE is willing to substantively respond to Staff’s letter to refute its inaccuracies.

8 Third, Staff’s letter also does not indicate that the information in its letter was “unavailable and not reasonably discoverable with due diligence,” nor can it. The information

Staff cites is contained in one of PSE's publically-available tariffs, and was certainly available to Staff prior to the close of the evidentiary record or the briefing deadlines. Indeed, Staff's only explanation for its late submission was that it "came across this tariff language while researching another matter." Stumbling across tariff language two months after the record is closed and submitting legal argument more than three weeks following the close of briefing violates important principles of finality. As the Commission has recognized, "[t]here is a point at which due process requires that the record be closed so that the parties are not having to respond repeatedly to 'new' evidence and so that the Commission can do its job."¹ Allowing Staff to re-open the record through its letter creates an unworkable precedent in future cases when any party "comes across" evidence or an argument it failed to adequately research and articulate in the evidentiary record or during the permissible briefing period.

9 Finally, Staff has not provided any basis whatsoever for any other "good and sufficient cause" justifying Staff's belated filing. This is because there is no good cause to re-open the record or allow additional briefing to accommodate Staff. The information in the letter has questionable relevance and Staff has already had months to develop the record and its legal arguments in opposition to PSE's proposed tariff. Indeed, following the evidentiary hearing, Staff filed over sixty-five pages of briefing containing such arguments, in addition to its pre-hearing motion for summary determination.

10 The Commission should not entertain Staff's attempt to insert additional evidence and legal arguments after the record has been closed and the briefing deadlines have passed

¹ *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc., For an Order Authorizing Proposed Transaction*, Docket U-072375, Order 06, Granting Motions to Strike, ¶ 8 (Nov. 5, 2008).

without leave and without providing any legitimate explanation for why it should be granted permission to do so.

III. CONCLUSION

11 For the reasons set forth above, PSE respectfully requests that the Commission strike Staff's belated letter. In the event the Commission allows Staff's letter, PSE requests leave to respond in full to Staff's additional argument.

Respectfully submitted this 14 day of October, 2016.

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