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June 7, 2017

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VIA EMAIL AND OVERNIGHT MAIL

Dennis Moss, Administrative Law Judge
Rayne Pearson, Administrative Law Judge
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, Washington 98504-7250

Re: ***Washington Utilities & Transportation Commission v. Puget Sound Energy***
WUTC Dockets UE-170033 and UG-170034
Intervenor Sierra Club Use of Data Requests

Dear Judge Moss and Judge Pearson:

Puget Sound Energy ("PSE") writes to advise the Commission of concerns regarding the inappropriate use of discovery materials in WUTC Dockets UE-170033 and UG-170034 ("2017 General Rate Case"), by Intervenor Sierra Club, in violation of Commission Rules.

On May 31, 2017, PSE received a letter from Sierra Club's Senior Campaign Representative, Doug Howell, in which Mr. Howell commented on PSE's future plans regarding Colstrip Units 3 and 4 and expressed Sierra Club's position regarding how PSE should utilize Colstrip Units 3 and 4 in the future. Mr. Howell cited and quoted PSE's responses to several data requests served by Sierra Club in the 2017 General Rate Case. Mr. Howell then emailed his letter to members of the PSE Integrated Resource Plan Advisory Group ("IRPAG") (over fifty individuals), including members of the Commission's Policy Advisory staff and other persons who are not parties to the 2017 General Rate Case. PSE has significant concerns with Sierra Club's use of PSE's data request responses in this context.

First, data request responses in a Commission proceeding, until formerly admitted, are not evidence presented to the Commission for consideration. *See* WAC 480-07-460, -470. However, by emailing PSE's responses to the Commission Policy Advisory staff, Sierra Club inappropriately shared this information with the Commission Policy Advisory staff who report to, and directly advise, the Commissioners. Sierra Club has, in effect, provided the Commissioners with information that has not yet been admitted into evidence for purposes of the 2017 General Rate Case, months before the evidentiary hearings scheduled for August 2017.

Second, by sharing PSE's responses to data requests with the Commission Policy Advisory staff, Sierra Club may have violated RCW 34.05.455 and WAC 480-07-310, which prohibit ex parte communications with the Commission. WAC 480-07-310(1) provides:

> After an adjudicative proceeding begins and before a final resolution of the proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, including the commission's advocacy or investigative staff, may directly or indirectly communicate about the merits of the proceeding with the commissioners, the administrative law judge assigned to the adjudication, or the commissioners' assistants, advisory staff, legal counsel, or consultants assigned to advise the commissioners in that proceeding, unless reasonable notice is given to all parties to the proceeding so that they may participate in, or respond to, the communication.

In sharing PSE's data request responses with the Commission's Policy Staff, Sierra Club not only provided the responses, but it inappropriately shared its position and interpretation of the information in the responses. This is highly prejudicial to PSE, considering the parties are still conducting discovery and months away from hearing. Under RCW 34.05.455(7) and WAC 480-07-310(5), sanctions may be prescribed by the Commission where a party engages in ex parte communications.

Finally, Sierra Club's use of PSE's data request responses in matters beyond the context of the 2017 General Rate Case calls into question Sierra Club's motivations for participating in the 2017 General Rate Case. It appears that Sierra Club is using the information obtained through discovery in the 2017 General Rate Case for an advocacy campaign to address issues outside of the scope of the 2017 General Rate Case. This is likely to have a chilling effect on discovery — constraining the free flow of information, provoking more discovery disputes and increasing reliance on confidential designations. PSE believes Sierra Club's role as an intervenor in the 2017 General Rate Case is to contribute to matters that will be before the Commission in this case as limited by the Commission,[1] and not to use discovery it obtains for ulterior purposes in other matters.[2]

PSE believes strongly in the importance of maintaining the integrity of the proceedings before the Commission and avoiding even the appearance of impropriety. For these reasons, PSE is notifying the Commission of this incident and the improper use of discovery materials. It is

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[1] *Washington Utilities & Transportation Commission v. Puget Sound Energy*, Dockets UE-170033 & UG-170044, Order 03, ¶ 8 (Feb. 15, 2017).
[2] WAC 480-07-400(3) prohibits parties from using discovery for "any improper purpose."

PSE's view that Sierra Club's inappropriate conduct should be considered by the Commission in future cases in which Sierra Club seeks to intervene.

Very truly yours,

Sheree S. Carson

SSC:dss