



June 8, 2017

Via Electronic Filing and FedEx

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

Re: Docket UE-170033 and UG-170034 (*Consolidated*): Sierra Club Response to Puget Sound Energy's June 7, 2017 Letter

Dear Judge Moss and Judge Pearson:

Sierra Club writes in response to a letter sent to you by Puget Sound Energy ("PSE") yesterday on June 7, 2017 and docketed in WUTC Dockets UE-170033 and UG-170034 ("2017 General Rate Case"). In that letter, PSE alleged that Sierra Club acted improperly and potentially in violation of Commission Rules when Sierra Club sent a May 31, 2017 letter and email to PSE and members of the Integrated Resource Plan Advisory Group ("IRPAG"). Specifically, PSE asserted that Sierra Club (1) violated ex parte rules, and (2) engaged in abusive discovery tactics. These allegations are false, and Sierra Club addresses each of them in turn below.

However, at the start, Sierra Club acknowledges that it erred by failing to remove two Commission policy advisors from the IRPAG email list when it sent the May 31, 2017 email. Sierra Club did not intend to include on that email Commission staff members who are advising the commission or presiding officers in this case. Sierra Club realized the error the following morning on June 1, 2017 and immediately sent an email to Commission advisors Brad Cebulko and Steve Johnson requesting that they disregard and delete Sierra Club's May 31, 2017 email. Sierra Club took this action not because the communication was an ex parte contact (see discussion below), but rather because WAC 480-07-405 prohibits serving or copying data requests – or in this case a reference to and partial quotation of a single data request – on any person who is advising the Commission in the 2017 General Rate Case.

Sierra Club regrets this error. While we took immediate action to correct the error once it was discovered, it should not have happened and we will take extra effort to ensure that such an oversight does not occur again. Aside from that admitted error, however, Sierra Club strongly disagrees with PSE's assertion that Sierra Club violated the Commission's ex parte rules or engaged in abusive discovery tactics.

Sierra Club's May 31, 2017 Letter and Email

On May 31, 2017, Sierra Club Senior Campaign Representative, Doug Howell, sent a letter by email to PSE's IRP managers Phillip Popoff and Michele Kvam. Sierra Club cc'd the members of the IRPAG email list, which is an informal list of persons who are interested and participate in the IRP process. The intent of the letter was to raise concern about a pending decision by PSE about a future resource decision. Specifically, Sierra Club believed that PSE was on the verge of finalizing a contract that could have long-lasting impacts on its resource portfolio. Sierra Club judged that we and other IRP stakeholders could lose an important opportunity to raise this concern with PSE prior to its finalizing the decision if we failed to provide immediate notice to the Company.

Sierra Club learned about that pending decision from a response to a data request sent in discovery in the 2017 General Rate Case. In order to avoid confusion in the IRP process, Sierra Club's letter quoted from a single non-confidential data response (Response to Sierra Club Data Request No. 011) and referenced an attachment to that response.¹

Sierra Club's Letter was Not an Ex Parte Communication

Setting aside the fact that Sierra Club inadvertently included two Commission policy advisors, the content of Sierra Club's email to the IRPAG members was not an ex parte communication because it did not address the merits of the 2017 General Rate Case. Sierra Club raised a concern about a future resource decision that, to Sierra Club's knowledge, has not yet been finalized.

PSE cites to WAC 480-07-310(1), which prohibits "communicat[ion] about the merits of the proceeding...unless reasonable notice is given to all parties to the proceeding..." (emphasis added). Sierra Club's discussion in the IRP context about a pending resource decision does not go to the merits of the rate case proceeding. Future resource decisions are not within the scope of the 2017 General Rate Case, which addresses costs of service at issue in the test year.

Rather, Sierra Club understands that future resource decisions are properly discussed within the scope of the IRP, which is precisely the forum where Sierra Club raised the issue. While the prudence of PSE's decision may be at issue in a future rate case, the merits of the current adjudicative proceeding were not at issue in the letter.

¹ Sierra Club did not learn about the information contained in the data request attachment from discovery. That information was publicly available and previously known to Sierra Club.

Sierra Club understands the importance of ex parte rules and agrees that parties should act cautiously to avoid even the appearance of improper communication. As noted above, Sierra Club did not intend to communicate with any Commission staff that were on the opposite side of the ex parte wall for the 2017 General Rate Case. Still, Sierra Club does not believe that its error resulted in an inadvertent ex parte communication. Nevertheless, Sierra Club does not object to the presiding officers instituting the remedy addressed in WAC 480-01-310(4). That provision provides for the communication to be included in the record and an opportunity given to other parties to respond.

With regard to PSE's implication that Sierra Club should be sanctioned, Sierra Club strongly disagrees. Even if the May 31, 2017 email could be construed as addressing the merits of the adjudicative proceeding, which it did not, the inclusion of two Commission policy advisors was inadvertent and Sierra Club took immediate steps to address it. Moreover, the ex parte rules prohibit communication on the merits unless reasonable notice is given to all parties. While not all parties were included on the May 31, 2017 email, PSE certainly was provided immediate notice as the Company was the intended recipient of the email.

Sierra Club Has Not Engaged in Abusive Discovery

Finally, Sierra Club addresses PSE's question concerning Sierra Club's motives in this proceeding and the implication that Sierra Club engaged in abusive discovery. Sierra Club did not engage in any improper actions with regard to discovery. Sierra Club can find no statute or rule, and PSE does not cite to any, that prohibits parties from discussing topics with PSE in the IRP process that are learned during the course of the rate case. However, to the extent that such behavior runs afoul of a practice or norm generally accepted at the Commission, Sierra Club welcomes the presiding officers' guidance on this issue and will commit to following such practice in the future.

Sierra Club understands the importance of open and transparent discovery in adjudicative proceedings. Sierra Club has intervened in several UTC proceedings and conducted ourselves in a professional and productive manner. Most recently, Sierra Club intervened and provided multiple rounds of highly technical expert testimony in PacifiCorp's 2016 General Rate Case (UE-152253). The issues raised by Sierra Club in that proceeding were highly relevant to the final order, and Sierra Club believes helped inform the Commission's ultimate decision in that case. Our goal is to provide a similar level of quality expert testimony in this proceeding.

Sierra Club did not intervene in PSE's 2017 General Rate Case to go on a "fishing expedition" through discovery. We fully intend and are prepared to file robust expert testimony on June 30, 2017 to address issues directly within the scope of PSE's requested rate increase. In fact, our discovery has been relatively modest. In contrast to the hundreds of data requests issued by other parties, Sierra Club has issued only 16 requests.

Among the several hundred discovery requests and responses that have gone on in this proceeding, Sierra Club learned one fact that we judged was of critical importance to bring to the attention of PSE and the IRPAG immediately. That fact, which was included

in response to Sierra Club Data Request No. 011(b), suggested that PSE was on the verge of making a critical decision any day about a future resource commitment that could have long-term ramifications. Sierra Club judged that waiting several months until a final order was issued in the 2017 General Rate Case would be too late, and IRP stakeholders would be deprived of the opportunity to provide input to PSE prior to making this long-term resource commitment.

Sierra Club stands by its decision to raise with PSE in the appropriate context – the IRPAG process – a single fact that potentially has imminent and long-term repercussions for PSE’s customers. Moreover, that particular decision, which is forward looking, is not directly at issue in the 2017 General Rate Case.

It was, and continues to be, Sierra Club’s understanding that the discussion prompted by the data response was appropriately raised in the IRP process. If the Commission or the presiding officers disagree, we welcome your guidance on that issue so that we can adjust our future actions accordingly.

Respectfully submitted,

/s/ Travis Ritchie

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cc: Service List