

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

No. PG-160924

**PUGET SOUND ENERGY’S MOTION
TO STRIKE PORTIONS OF THE
PREFILED DIRECT TESTIMONY OF
SEBASTIAN COPPOLA ON BEHALF
OF PUBLIC COUNSEL**

I. INTRODUCTION AND RELIEF REQUESTED

1 Puget Sound Energy (“PSE”) supports and joins in WUTC Staff’s (“Staff”) Motion to
Strike Portions of Public Counsel’s Testimony in Opposition to Settlement (“Staff Motion to
Strike”) for the reasons set forth therein.

2 Accordingly, pursuant to WAC 480-07-375(1)(d), PSE likewise moves to strike the
following portions of the Prefiled Direct Testimony of Sebastian Coppola, Exhibit No. SC-1T,
filed on behalf of Public Counsel:

PORTION TO STRIKE	ISSUE	JUSTIFICATION TO EXCLUDE
SC-1T at page 9, lines 2-4	Attempt to amend or alter the complaint	Due process, violates procedural rules, and irrelevant to jurisdictional complaint
SC-1T at page 9, line 15 beginning with “alternatively . . .” through line 17	Attempt to amend or alter the complaint	Due process, violates procedural rules, and irrelevant to jurisdictional complaint
SC-1T at page 9, lines 18-21	Rate setting matters	Irrelevant/immaterial
SC-1T at page 9 line 22 through page 10 line 14	PC internal disagreement over inspection and remediation	Irrelevant/immaterial
SC-1T at page 17 line 13 through page 22 line 23 ¹	Attempt to amend or alter the complaint	Due process, violates procedural rules, and irrelevant to jurisdictional complaint
SC-1T at page 23 line 11 through page 24 line 2	Attempt to amend or alter the complaint	Due process, violates procedural rules, and irrelevant to jurisdictional complaint
SC-1T at page 26, lines 1-11	Attempt to amend or alter the complaint	Due process, violates procedural rules, and irrelevant to jurisdictional complaint
SC-1T at page 26, lines 12-22	Rate setting matters	Irrelevant/immaterial
SC-1T at page 33 line 19 through page 35 line 22	PC internal disagreement over inspection and remediation	Irrelevant/immaterial
SC-1T at page 36, lines 9-13	Attempt to amend or alter the complaint	Due process, violates procedural rules, and irrelevant to jurisdictional complaint
SC-1T at page 36, lines 14-17	Rate setting matters	Irrelevant/immaterial
SC-1T at page 36 line 18 through page 37 line 10	PC internal disagreement over inspection and remediation	Irrelevant/immaterial

To the extent not covered here, PSE incorporates by reference Staff’s rationale for excluding the testimony. Further, additional reasons follow below why the Motions to Strike should be granted.

¹ Includes supporting testimony for Exhibits SC-6 and SC-7, which the Commission should strike as well.

II. BACKGROUND

A. The Commission Issues a Complaint Against PSE For Violations of Gas Safety Rules

3 On March 9, 2016, a natural gas explosion occurred in the vicinity of Greenwood Avenue North in Seattle.² Staff and PSE conducted extensive independent investigations into the incident.³ PSE's investigation included site visits, laboratory analyses, and a review of internal processes and procedures.⁴ PSE cooperated with Staff's investigation by responding to informal discovery and providing Staff access to physical evidence.⁵ On September 20, 2016, after six months of investigation, Staff issued its Investigation Report, which recommended that the Commission issue a formal complaint and open this docket.⁶ The Commission found probable cause to issue the Complaint and, based on Staff's investigation, the Commission alleged seventeen violations of its gas safety rules.

4 On October 3, 2016, PSE filed its Answer and Affirmative Defenses to the Complaint, in which PSE admitted certain allegations in the Complaint and denied certain other allegations in the Complaint.

5 On November 1, 2016, the Commission held a prehearing conference. Following the prehearing conference, formal discovery ensued, including the exchange of data requests and responses. PSE also deposed Staff's pipeline safety director and lead investigator.⁷

B. Staff and PSE Enter Into a Settlement

6 In accordance with WAC 480-07-700, and as provided in the procedural schedule, the parties entered into settlement negotiations. The parties engaged in multiple separate

² Final Staff Investigation Report (Sept. 20, 2016).

³ Narrative Supporting Settlement Agreement, at ¶¶ 8-15 (Mar. 28, 2017).

⁴ *Id.*

⁵ *Id.*

⁶ Final Staff Investigation Report (Sept. 20, 2016).

⁷ Narrative Supporting Settlement Agreement, at ¶ 18.

settlement conferences, and Public Counsel participated in each one. Additionally, the parties conferred telephonically on several occasions regarding settlement. The procedural schedule was revised twice to accommodate these settlement discussions.

7 After the lengthy negotiations, Staff and PSE entered into a settlement agreement that, with an accompanying narrative, was filed with the Commission on March 28, 2017. The settlement agreement represents a compromise of the parties' respective positions and was entered into to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome.⁸

C. Public Counsel Agreed With Proposed Inspection and Remediation Program

8 Although Public Counsel actively participated in all the settlement discussions, it ultimately declined to join PSE and Staff in the Settlement Agreement. Nevertheless, by letter addressed to Administrative Law Judge Gregory J. Kopta and dated April 12, 2017, counsel for Public Counsel agreed that, "Public Counsel will support the inspection and remediation plan," but disagreed with respect to penalties.⁹

III. ARGUMENT

A. Public Counsel's Expert Lacks A Factual Basis for His Opinions and Is Unqualified to Offer Such Testimony

9 PSE fundamentally disagrees with the factual basis by which Mr. Coppola supports his alleged additional causes of action and resulting penalties. Mr. Coppola inaccurately stated the factual evidence presented in this case and the issues raised by Mr. Coppola have not been explored through discovery. In fact, no representative of Public Counsel, including Mr. Coppola, participated in the investigation of the incident.

⁸ See *id.*, at ¶¶ 22-24.

⁹ Letter from Public Counsel to Judge Kopta dated April 12, 2017.

10 Moreover, Mr. Coppola appears unqualified to render such opinions and his assessment of the facts should not be substituted for Staff’s. Mr. Coppola does not have an in-depth knowledge of gas operations or PSE’s system, nor does he have a comprehensive grasp of the Commission’s enforcement policy or history. Rather, Mr. Coppola’s curriculum vitae indicates he has a financial background, having earned a Bachelor of Science degree in accounting and a Master of Business Administration in Finance.¹⁰ His most relevant gas operations experience appears to be limited to administrative roles in Materials Inventory and Warehousing Accounting.¹¹ His professional qualifications reflect that Mr. Coppola has never participated in any type of enforcement action before this Commission or any other commission.¹² Therefore, to suggest that his assessment of the facts in this case and the applicable law should be endorsed or adopted over Staff’s, and that Mr. Coppola alone is qualified to then issue a legal opinion that such facts constitute a violation of Commission rules, is not credible and should be rejected.

B. Public Counsel Seeks to Address Ratemaking Issues Which Are Outside the Scope of this Proceeding and Should Be Excluded

11 The Commission is empowered to determine just, reasonable, or sufficient rates pursuant to RCW 80.28.020. Such determination, however, may only be made following a hearing regarding the lawfulness of such rates.¹³ Public Counsel seeks to circumvent such a hearing

¹⁰ Coppola Testimony, at 4:11-5:17; Exh. SC-2.

¹¹ *Id.*

¹² *Id.* at 4:11-6:11; Exh. SC-2.

¹³ “Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any gas company, electrical company, wastewater company, or water company, for gas, electricity, wastewater company services, or water, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.” RCW 80.28.020 (emphasis added).

and preemptively adjudicate rates because Mr. Coppola's testimony inappropriately argues that PSE should not be able to recover in rates the cost of PSE's proposed Remediation Program.¹⁴

12 Mr. Coppola's ratemaking testimony should be excluded for several reasons. First, the costs of PSE's proposed Remediation Program are presently unknown. As stated above, the Commission has the authority to determine just, reasonable, and sufficient rates. However, a sweeping prohibition against recovering any such costs, before they have even been identified or incurred, is unfounded and premature.

13 Second, while the Commission has precluded public utilities from recovering in rates the penalties issued by the Commission,¹⁵ there is no Commission precedent to exclude the cost of a program that would be indistinguishably intertwined with PSE's routine maintenance and business operations. PSE's proposed Remediation Program would be an extension and expansion of its existing pipeline safety operations, which are inherent in the costs to operate and maintain a natural gas pipeline system. And, if deemed prudent, known, and measurable, would in almost all circumstances be recoverable in rates.

14 Last, one of the purposes of settlement is a compromise of positions for the purposes of resolving and avoiding the uncertainties and costs of ongoing litigation. If Public Counsel objects to PSE's inclusion of costs associated with its proposed Remediation Program in rates, it will have other opportunities to raise this objection in future proceedings when PSE's rates are specifically at issue. That issue, however, is beyond the scope of this case, and Public Counsel's testimony on it should be excluded.

¹⁴ Coppola Testimony, at 8:16-23, 9:2-4, 26:12-22, 36:14-17.

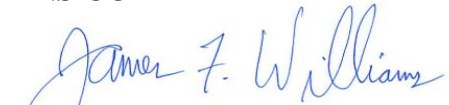
¹⁵ See, e.g., *In the Matter of Verizon Communications, Inc.*, Docket UT-090842, Order 6, at ¶ 59 (Apr. 16, 2010) (“[T]he company is specifically prohibited from seeking to recovery any service quality penalty or credit amounts in any future rate proceedings.”).

IV. CONCLUSION

15 For the foregoing reasons, PSE joins in Staff’s Motion to Strike and requests that the Commission strike the portions of the Prefiled Direct Testimony of Sebastian Coppola, Exhibit No. SC-1T.

Respectfully submitted this 1st day of May, 2017.

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