

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET PG-160924

ORDER 03

ORDER GRANTING IN PART,
DENYING IN PART, AND
HOLDING IN ABEYANCE IN
PART MOTIONS TO STRIKE

BACKGROUND

- 1 On September 20, 2016, the Washington Utilities and Transportation Commission (Commission) initiated a complaint against Puget Sound Energy (PSE) as a result of Commission regulatory staff's (Staff) investigation into a natural gas explosion that occurred in the vicinity of 8411 Greenwood Ave. N, Seattle, Washington, on March 9, 2016. On November 2, 2016, the Commission entered a Prehearing Conference Order establishing a procedural schedule.
- 2 On March 28, 2017, Staff and PSE filed with the Commission a multi-party Settlement Agreement (Settlement) and supporting Narrative. On March 29, 2017, the Commission issued a notice suspending the existing procedural schedule and setting this matter for hearing on May 15, 2017.
- 3 On April 13, 2017, the Commission issued a notice establishing deadlines for Public Counsel to submit testimony in opposition to the Settlement and for Staff and PSE to submit responsive testimony. Public Counsel submitted the testimony of Sebastian Coppola on its behalf on April 24, 2017.
- 4 On April 28, 2017, Staff filed a Motion to Strike Portions of Public Counsel's Testimony in Opposition to Settlement (Staff Motion). Staff seeks to have the Commission strike or otherwise exclude portions of Mr. Coppola's testimony in three areas:

- (1) **Attempt to Amend the Complaint.** After reviewing Staff's investigation and the Company's responses to data requests, Mr. Coppola states that PSE's actions or

inactions resulted in violations of Commission rules in addition to those alleged in the complaint, and he recommends that the Commission penalize the Company for those additional violations. Staff contends that this testimony violates due process, fails to comply with the Commission's procedural rules governing amending a complaint, and is irrelevant to the issues presented in this proceeding.

(2) **Rate Treatment for Inspection and Remediation Program.** Mr. Coppola recommends that the Commission refuse to allow PSE to recover through rates the costs it incurs in conjunction with the inspection and remediation program established in the Settlement. Staff asserts that this testimony exceeds the scope of this docket and is irrelevant and immaterial.

(3) **Adequacy of Inspection and Remediation Program.** Mr. Coppola recommends that the Commission make modifications to the settling parties' proposed inspection and remediation program. Staff urges the Commission to strike this testimony as inconsistent with Public Counsel's prior representations that it agrees with and supports that program and objects only to the penalty provisions in the Settlement.

5 On May 1, 2017, PSE filed a Motion to Strike Portions of the Prefiled Direct Testimony of Sebastian Coppola on Behalf of Public Counsel (PSE Motion). The Company joins the Staff Motion and provides additional justification for the remedies Staff has requested. PSE alleges that Mr. Coppola lacks a factual basis for his opinions and appears unqualified to render those opinions because he lacks sufficient knowledge of gas operations, PSE's system, and the Commission's enforcement policies and history. The Company also contends that the costs of the proposed remediation program are unknown, and any restriction now on PSE's ability to recover such costs would be premature, unprecedented, and more appropriately considered in a separate rate proceeding.

6 On May 4, 2017, Public Counsel filed its opposition to both motions. Public Counsel contends that its position on the inspection and remediation plan evolved as a result of its newly retained witness' insights, observations, and opinions. Public Counsel further maintains that Mr. Coppola has extensive utility experience and a thorough understanding of the procedures and processes involved with natural gas pipelines that will assist the Commission in resolving the disputed issues in this proceeding. Public Counsel supports the propriety of its recommendation to deny recovery of the inspection and remediation program costs through rates as consistent with Commission discretion and its prior decision in Docket PG-060215. Similarly, Public Counsel claims that the Commission

has discretion to consider whether Public Counsel's testimony provides a sufficient basis to amend the complaint, find additional violations, and impose additional penalties.

DISCUSSION AND DECISION

7 The Commission grants the Staff Motion and PSE Motion (collectively Motions) in part, denies them in part, and holds them in abeyance in part as follows.

8 **Attempt to Amend the Complaint.** The Commission grants the Motions with respect to the portions of the testimony that request that the Commission find violations in addition to those alleged in the complaint. The Commission's procedural rules provide that the Commission "may allow amendments to pleadings, motions, or other documents on such terms as promote fair and just results."¹ Amending the complaint to add violations under the circumstances here would not promote fair and just results. A party's request to amend a pleading must be in the form of a petition or motion signed and submitted by counsel (or party representative if the party is not represented by an attorney), not in the prefiled testimony of a witness. We reject Public Counsel's argument that it can provide a factual basis for additional violations and rely on Commission discretion to amend the complaint and impose additional penalties. Moreover, even a proper request to amend the complaint would not be timely here, as Staff and PSE observe, coming three weeks before the settlement hearing and seven months after the Commission initiated the complaint.

9 Accordingly, the Commission strikes the portions of Mr. Coppola's testimony that request or recommend that the Commission amend the complaint, as well as the legal allegations that the Company's conduct resulted in violations that were not alleged in the complaint.

10 The Commission, however, will not strike the factual portions of the testimony that discuss PSE's conduct in the context of the additional alleged violations. The Commission construes such testimony as supporting Mr. Coppola's overall conclusion that the Company's behavior warrants a higher monetary sanction than the penalty in the Settlement and as such, is properly included in his prefiled testimony. The Commission will not make a determination at this time on whether Mr. Coppola has sufficient knowledge or qualifications to render his opinions on this subject. Staff and PSE may

¹ WAC 480-07-395(5).

address that issue in their responsive testimony and cross-examination of Mr. Coppola at the hearing.

11 **Rate Treatment for Inspection and Remediation Program.** The Commission grants the Motions with respect to the testimony recommending that the Commission disallow rate recovery of the costs PSE incurs in conjunction with the proposed inspection and remediation program. This docket is a complaint proceeding, not a rate case, and cost recovery is not at issue. The Commission in Docket PG-060215, the case Public Counsel cites in support of its position, approved a settlement agreement between Staff and PSE, one of the provisions of which was that the Company would pay the initial \$250,000 cost of a third-party audit of PSE's mandated gas safety program.² The Settlement here includes no comparable requirement or any other provision that raises the issue of cost recovery for the inspection and remediation program. The Commission will not expand the scope of this proceeding to speculate on the nature and amount of costs the Company will incur to comply with the Settlement as opposed to its other network management and maintenance costs, or to prejudge whether PSE should be allowed to recover some or all of those costs in rates.

12 Accordingly, the Commission strikes the portion of Mr. Coppola's testimony concerning rate treatment for the inspection and remediation program.

13 **Adequacy of Inspection and Remediation Program.** The Commission reluctantly declines to grant the Motions concerning testimony on recommended modifications to the inspection and remediation program on the grounds of Public Counsel's prior inconsistent statements. A party that opposes a settlement agreement may present testimony supporting all grounds on which that opposition rests. We find insufficient grounds at this point in the proceeding to strike these portions of that testimony on those grounds.

14 We note, as did the parties to the Settlement, that Public Counsel notified the Commission and the parties that Public Counsel was disputing only the penalty provisions in the Settlement. In an April 12, 2017, letter to the Commission, Public Counsel stated that "Public Counsel will support the inspection and remediation plan, but we disagree with respect to penalties."³ Staff represents that in an April 10, 2017, email

² WUTC v. PSE, Docket PG-060215, Order 02, Final Order Accepting Settlement Agreement on Condition ¶¶ 6 & 21 (April 3, 2008).

³ Letter to Judge Kopta from Lisa Gafken (April 12, 2017).

to the parties, Public Counsel stated that it “agrees with the inspection and remediation plan, but will argue that the maximum penalty is appropriate.”⁴ While we are dissatisfied with Public Counsel’s handling of the matter, we nonetheless acknowledge that parties’ positions may “evolve” as Public Counsel asserts, and for that reason we will not grant the Motions based on Public Counsel’s prior statements. We make this decision with some discomfort, as we also expect parties to be mindful that sudden and late changes in their positions result in inconvenience, if not prejudice, to the parties who rely on their assertions. Indeed, we are concerned that by not granting the Motions on this basis, we encourage inappropriate behavior in the future. We trust that will not be the case.

15 However, we will not yet deny the Motions with respect to these portions of Public Counsel’s prefiled testimony. Parties to the Settlement also based their Motions on the alleged lack of relevant expertise, credentials, or professional experience of Public Counsel’s witness, Mr. Sebastian Coppola, regarding inspection and remediation programs. We will hold this aspect of the Motions in abeyance and take the matter up at the hearing on May 15, 2017. At that time, parties will have the opportunity to discuss the qualifications of Public Counsel’s witness to provide expert testimony on the proposed inspection and remediation program.

16 Consistent with these decisions, the Commission strikes the following portions of the prefiled Direct Testimony of Sebastian Coppola, Exhibit SC-1T:

Page 9, lines 2-4 and 15 (beginning with “, or alternatively”) through 21;

Page 18, lines 4-5;

Page 19, lines 14-15;

Page 20, lines 21-22;

Page 21, lines 15-16;

Page 23, line 11, though page 24, line 2;

Page 26, lines 11-22; and

Page 36, line 11 (beginning with “, or alternatively”) through 17, and replace the number “3” with “2” at the beginning of line 18.

⁴ Staff Motion ¶ 21.

Public Counsel should file a redacted version of Mr. Coppola's testimony in legislative format that indicates the stricken portions.

ORDER

THE COMMISSION ORDERS:

- 17 (1) The Commission grants the motions of Staff and Puget Sound Energy to strike portions of the prefiled testimony of Sebastian Coppola with respect to the portions (a) requesting or recommending that the Commission amend the complaint to add violations and specifying those violations; and (b) requesting that Puget Sound Energy be denied the ability to recover in rates the costs the Company incurs to implement the proposed inspection and remediation program, both as more fully discussed above.
- 18 (2) The Commission denies the motions of Staff and Puget Sound Energy to strike portions of the prefiled testimony of Sebastian Coppola with respect to the portions discussing Puget Sound Energy's conduct in the context of the alleged additional violations, as more fully discussed above.
- 19 (3) The Commission holds in abeyance the motions of Staff and Puget Sound Energy to strike portions of the prefiled testimony of Sebastian Coppola with respect to the portions discussing and recommending modifications to the proposed inspection and remediation program, as more fully discussed above.
- 20 (4) Public Counsel must file a redacted version of Mr. Coppola's testimony in legislative format that indicates with strike-through text the portions of the testimony the Commission has stricken as listed in paragraph 16 of this Order no later than May 10, 2017.

Dated at Olympia, Washington, and effective May 5, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge