

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	DOCKET NO. UE-031725
Complainant,)	
)	
v.)	ORDER NO. 03
)	
PUGET SOUND ENERGY, INC.,)	
)	PREHEARING CONFERENCE
Respondent.)	ORDER
.....)	

1 **PROCEEDINGS:** On October 24, 2003, Puget Sound Energy, Inc., (PSE or the Company) filed with the Commission revisions to its currently effective Tariff WN U-60, designated as Twenty Fifth Revised Sheet No. 95, and Original Sheet Nos. 95-a through 95-e. The stated effective date is November 24, 2003. This filing is a proposal to change PSE's rates recovering the cost of power, as a result of its decision to purchase a new generating resource. The filing is authorized by the Settlement Stipulation approved by the Commission in Docket Nos. UE-011570 and UG-011571. The Commission conducted a prehearing conference on November 6, 2003, before Administrative Law Judge Dennis J. Moss.

2 **PARTY REPRESENTATIVES:** Todd G. Glass, Heller Ehrman White & McAuliffe LLP, Seattle, Washington, represents PSE. S. Bradley Van Cleve and Matthew W. Perkins, Davison Van Cleve, Portland, Oregon, represent the Industrial Customers of Northwest Utilities (ICNU). Melinda Davison, Davison Van Cleve, Portland, Oregon, represents Microsoft Corporation. John Cameron, Davis Wright Tremaine, LLP, Portland, Oregon, represents joint intervenors TransCanada Pipelines Limited (TransCanada) and BP West Coast Products

(“BP”). Norman Furuta, Department of the Navy, represents the Federal Executive Agencies (FEA). Simon ffitch, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of Attorney General. Robert C. Cedarbaum, Senior Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff).¹

3 **PETITIONS TO INTERVENE; REQUEST FOR INTERESTED PERSON**

STATUS: The following persons filed petitions to intervene or petitioned orally at the prehearing conference for interventor status:

1. Industrial Customers of Northwest Utilities
2. Microsoft Corporation
3. TransCanada Pipelines Limited and BP West Coast Products (joint petition)
4. Federal Executive Agencies

4 No objection was heard to any of these petitions. The Commission finds that each of these petitioners has established a substantial interest in this proceeding and that their participation will be in the public interest. These petitions to intervene are granted.

5 The Cogeneration Coalition of Washington (CCW) submitted a “Petition To Intervene” by e-mail transmission to the Commission’s Records Center several days prior to the prehearing conference. Although the e-mail stated that an original would follow via mail, the Commission did not receive an original

¹ In formal proceedings, such as this case, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding ALJ, and the Commissioners’ policy and accounting advisors from all parties, including Staff. *RCW 34.05.455*.

document. No one appeared for CCW at the prehearing conference. WAC 480-09-100(3)(b)(i) states in relevant part:

Electronic transmission is not acceptable for formal correspondence or documents to be filed. The commission may make exceptions to this requirement in individual cases and may impose condition on the use of electronic transmission.

The Commission made no exception to permit electronic filing of petitions to intervene in this proceeding.

- 6 In light of CCW's failure to comply with the Commission's filing requirements, and its failure to appear at the prehearing conference, the Commission will treat its e-mail and "Petition To Intervene" as a request for status as an Interested Person (IP) and will include Mr. Michael P. Alcantar and Mr. Donald Brookhyser, both of Alcantar & Kahl LLP, and Mr. James Ross, RCS, Inc. on the Commission's IP list for this proceeding. This is without prejudice to CCW filing a petition to intervene that complies with the Commission's rules, including the requirement in WAC 480-09-430(1)(a) that: "No such petition shall be filed or made after the proceeding is underway, except for good cause shown."
- 7 **DISCOVERY; PROTECTIVE ORDER:** The parties initiated informal discovery prior to the prehearing conference. Discovery will continue pursuant to the Commission's discovery rule, WAC 480-09-480. Staff and others, without objection, proposed that the response time for data requests be reduced to five business days, effective immediately. Given the expedited procedural schedule established below, the shortened response time is reasonable. All parties are required to provide responses to data requests within five business days following receipt. In addition, to further expedite the exchange of potentially relevant information, all parties are required to provide all work papers, including model runs and source documents, at the time they prefile testimony and exhibits, or as soon thereafter as possible. The Commission urges the parties

to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.

- 8 The Commission entered a Protective Order (Order No. 2) in this proceeding on October 29, 2003, to facilitate the filing and exchange among parties, during discovery and otherwise, of information that is deemed confidential by the party in whose custody and control the information is held. Public Counsel raised an informal objection to the Protective Order at prehearing, arguing that it imposes requirements on Public Counsel, a statutory party, that are different from those imposed on Commission Staff, also a statutory party. Public Counsel is simply incorrect; the Protective Order accords identical treatment to Commission Staff and Public Counsel.
- 9 Public Counsel also argued that the Commission has previously interpreted the relevant part of its standard form of Protective Order to relieve any outside consultants that Public Counsel (and, presumably, Staff) may employ from the affidavit requirement in paragraph 12 of the Protective Order and the requirement in that same paragraph that outside consultants execute the Highly Confidential Information Agreement that is attached to the Protective Order as Exhibit C. The Commission does not agree that it has given such an interpretation to prior protective orders and it expressly rejects such an interpretation with respect to the Protective Order entered in this proceeding.
- 10 Public Counsel based its arguments, in part, on the 12th and 13th Supplemental Orders in Docket No. UT-030614. Public Counsel requested in Docket No. UT-030614 that the Commission clarify that Public Counsel should be permitted to receive and review information designated as “Highly Confidential” under the Protective Order entered in that proceeding (*i.e.*, the 8th Supplemental Order) on the same basis as Commission Staff. In its 12th Supplemental Order, the Commission granted Public Counsel’s petition for clarification based on its finding that: “Public Counsel has assured the Commission that it is not sharing a

witness or information with any other party to this proceeding.” The Commission amended its Protective Order in Docket No. UT-030614, in part relevant here, by providing an exception to the requirement that parties use only “one outside counsel, one outside consultant , and one administrative support person to receive and review materials marked Highly Confidential.” This exception, by its express terms, applies to both Staff and Public Counsel. An identical exception is included in the Protective Order in this proceeding.

- 11 The Commission’s 12th Supplemental Order in Docket No. UT-030614, thus shows that insofar as Staff and Public Counsel are identically situated as statutory parties, the Commission will afford them identical treatment under a standard form of Protective Order. Again, Staff and Public Counsel are expressly afforded identical treatment under the Protective Order entered in this proceeding. *See WUTC v. PSE, Docket No. UE-031725, Order No. 02, Protective Order With "Highly Confidential" Provisions (October 29, 2003), ¶¶ 12 and 17.*
- 12 The issue of whether any outside consultant employed by Public Counsel (or Staff) should be relieved from the affidavit and other requirements for outside consultants under the 8th Supplemental Order in Docket No. UT-030614 was not addressed in the Commission’s 12th Supplemental Order in that proceeding. The Commission’s 13th Supplemental Order in that proceeding, however, does address the affidavit requirement in response to a request for clarification from WebTEC. The Commission expressly rejected WebTEC’s argument that the affidavit requirement should not apply to outside counsel or experts, and stated the Commission’s view that “WebTEC’s proposed modifications would result in exceptions that swallow the rule.”
- 13 Rather than supporting Public Counsel’s argument in this proceeding, the 13th Supplemental Order in Docket No. UT-030614 underscores the importance of establishing restrictions against access to Highly Confidential information by persons in the private sector who may become involved in competitive decision

making by competitors of a company that provides such information under the Protective Order. *See 13th Supplemental Order, Docket No. UT-030614 at ¶¶ 19 and 20.* This includes outside consultants that any party, including Public Counsel, might employ. Such consultants are not under Public Counsel's direct supervision and control except to the extent of their immediate engagement by Public Counsel. While Public Counsel may enjoy special status as a statutory party, an outside consultant hired by Public Counsel is no different than an outside consultant hired by a private party. Such consultants may be employed by competitors of a company that is required to provide information under the Highly Confidential provisions of a protective order in a Commission proceeding. It is reasonable that all outside consultants be required to meet the same affidavit and other requirements regardless of whether they are employed by a private party or a statutory party.

14 **PROCEDURAL SCHEDULE:** Commission Staff presented for consideration a proposed procedural schedule that represented a compromise among Staff, Public Counsel, and PSE. The Commission has considered this proposed schedule and finds that the proposal to conduct evidentiary hearings the week of February 16, 2004, is unworkable due to the press of other business during that week. In addition, the Commission finds that it is preferable to allow time in the procedural schedule for simultaneous reply briefs, while maintaining March 5, 2004, as the deadline for the receipt of all briefs. The Commission will adjust the parties' proposed schedule by moving all proposed procedural dates back by one week, thus preserving all intervals between events, except for the initial interval between PSE's filing and the filing of response cases by Staff, Public Counsel, and the Intervenors. The initial interval is adjusted from 84 days to 77 days. The Commission establishes the procedural schedule that is attached to this Order as Appendix 1, which is incorporated into the body of this Order by this reference.

15 **FILING; COPIES OF MATERIALS:** Parties must submit an original and 19 copies of all documents filed. All filings must be mailed to the Commission

Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered by hand to the Commission Executive Secretary at the Commission's records center at the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504. Both the post office box and street address are required to expedite deliveries by U.S. Postal Service.

- 16 An electronic copy of all filings must be provided by e-mail delivery to <records@wutc.wa.gov>. Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format.
- 17 All paper copies of testimony, exhibits, and briefs are required to conform to the publication guidelines attached to this Order as Appendix 2 and to the Commission's procedural rules governing filings. The Commission may require a party to refile any document that fails to conform to these standards.
- 18 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.**

DATED at Olympia, Washington, and effective this 12th day of November 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

APPENDIX 1

PROCEDURAL SCHEDULE DOCKET NO. U-031725

EVENT	DATE	INTERVAL
PSE's Prefiled Direct Testimony	October 24, 2003	
Staff, Public Counsel, and Intervenor Response Testimony	January 9, 2004	77 days
PSE Rebuttal Testimony	January 23, 2004	14 days
Evidentiary Hearing	February 9-13, 2004	17 days
Simultaneous Initial Briefs	February 27, 2004	14 days
Simultaneous Reply Briefs	March 5, 2004 (electronic submission by noon)	7 days

APPENDIX 2

I. Requirements for ALL paper copies of testimony, exhibits, and briefs

A. All paper copies of briefs, prefiled testimony, and original text in exhibits **must** be

- On 8 ½ x 11 paper, punched for insertion in a 3-ring binder,
- Punched with OVERSIZED HOLES to allow easy handling.
- Double-spaced
- 12-point or larger text and 10-point or larger footnotes, Palatino Linotype, Times New Roman or equivalent serif font.
- Minimum one-inch margins from all edges.

Other exhibit materials need not be double-spaced or 12-point type, but must be printed or copied for optimum legibility.

B. All electronic and paper copies must be

- SEQUENTIALLY NUMBERED (all pages). **THIS INCLUDES EXHIBITS.** It is not reasonable to expect other counsel or the bench to keep track of where we are among several hundred (or sometimes even just several) unnumbered pages.
- DATED ON THE FIRST PAGE OF EACH ITEM and on the label of every diskette. If the item is a revision of a document previously submitted, it must be clearly labeled (REVISED), with the same title, and with the revision date clearly shown.

II. Identifying exhibit numbers; Exhibits on cross-examination.

A. **Identifying exhibits.** Parties are required to mark prefiled testimony and exhibits for identification. Parties must mark all written testimony and exhibits for identification prior to submission as follows:

- (i) Identify the sponsoring witness by including the witness's initials,
- (ii) Place a hyphen after the witness's initials and insert a number; beginning with Arabic numeral 1, and sequentially number each subsequent exhibit (including any subsequent written testimony) throughout the proceeding;
- (iii) Place the letter "C" after the number if the testimony or exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding.

For example, John Q. Witness's prefiled testimony and accompanying exhibits should be marked as follows:

Testimony or Exhibit	Marked for identification
John Q. Witness's prefiled direct testimony	Exhibit No. ____ (JQW- 1)
First exhibit to John Q. Witness's prefiled direct testimony (non-confidential)	Exhibit No. ____ (JQW-2)
Second exhibit to John Q. Witness's prefiled direct testimony (confidential)	Exhibit No. ____ (JQW- 3C)
Third exhibit to John Q. Witness's prefiled direct testimony (non-confidential)	Exhibit No. ____ (JQW-4)
John Q. Witness's prefiled rebuttal testimony	Exhibit No. ____ (JQW-5)
First exhibit to John Q. Witness's prefiled rebuttal testimony (non-confidential)	Exhibit No. ____ (JQW-6)

Counsel and other party representatives who are unfamiliar with this method of marking testimony and exhibits for identification should ask the presiding officer for further guidance.

- B. **Exhibit List:** Prepare a list of your exhibits with their premarked designations and descriptions in digital form and in a format specified by the Commission. You will be required to submit your exhibit list to the presiding officer prior to the evidentiary hearing. This will simplify identification and ease administrative burdens.

NOTE: Be prepared to submit all of your possible exhibits on cross-examination several days prior to the hearing. We will schedule a prehearing conference to deal with the exhibits as close as possible to the hearing itself, but we have administrative needs that require prefiling.

APPENDIX 3

PARTIES' REPRESENTATIVES

DOCKET NO. UE-031725

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Puget Sound Energy	Todd Glass Heller Ehrman White & McAuliffe LLP 701 Fifth Avenue, Suite 6100 Seattle, WA 98104-7098	206-389-6142	206-447-0849	tglass@hewm.com
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Microsoft Corporation	Melinda Davison Davison Van Cleve, P.C. 1000 SW Broadway, Ste. 2460 Portland, OR 97205	503-241-7242	503-241-8160	mail@dvclaw.com
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Commission Regulatory Staff	Robert D. Cedarbaum Senior Counsel 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia, WA 98504-0128	360-664-1160	360-586-5522	rcedarba@wutc.wa.gov