

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

The PUBLIC COUNSEL Section of the Office
of the Washington Attorney General,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

NO. UE-011411

MOTION TO AMEND THE ANSWER OF
RESPONDENT PUGET SOUND ENERGY,
INC.

1. Puget Sound Energy, Inc. (PSE) hereby moves to amend its answer to Public Counsel's complaint in the above-referenced docket in the event the Commission grants Public Counsel's Motion to Strike dated November 15, 2001 (the "Motion to Strike"). PSE's full name and mailing address are:

MOTION TO AMEND THE ANSWER OF
RESPONDENT PUGET SOUND ENERGY,
INC. - 1

[07771-0100/011411, PSE, Motion to Amend the Answer of
Respondent, 12-5-01.doc]

PERKINS COIE LLP
One Bellevue
Center, Suite
1800
411 - 108th
Avenue Northeast
Bellevue, WA
98004 - 5584
(425) 453-
6980

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

Puget Sound Energy, Inc.
P.O. Box 97034
Bellevue, Washington 98009-9734
Attn: Steve Secrist,
Director, Rates & Regulation

2. This Motion brings into issue the following regulations: WAC 480-09-420(8) and 480-09-425(5).

I. PSE SHOULD BE PERMITTED TO AMEND ITS ANSWER

3. WAC 480-09-425(5) sets forth a liberal standard for amending pleadings:

Amendments. The commission may allow amendments to the pleadings or other relevant documents at any time upon such terms as may be lawful and just.

4. The Commission's regulation is consistent with Civil Rule 15(a),¹ under which the superior courts freely allow amendments of pleadings when justice so requires. See e.g., Orwick v. Fox, 65 Wn. App. 71, 89, 828 P.2d 12 (1992) (noting that in the absence of prejudice to nonmoving party, delay alone is insufficient to justify denial of motion to amend). Civil Rule 15(a) applies to amending pleadings for the purpose of adding affirmative defenses. See Dep't of Revenue v. Puget Sound Power & Light Co., 103 Wn.2d 501, 504, 694 P.2d 7 (1985) ("Affirmative defenses are within the scope of CR 15(b).").

5. In this case, Public Counsel has filed a motion to strike PSE's defenses of waiver, estoppel and the Takings Clause, alleging that PSE has not fully and completely disclosed the nature

¹ The Commission may look to analogous Civil Rules for guidance in interpreting its own rules. See In re Application P-66283 for authority to transfer Common Carrier Permit No. CC-8779 From: Delta Trucking Co., Inc. To: Thorndike Trucking, Inc., 1982 Wash. LEXIS 6, at *10 (1982) (relying on Civil Rule 15(a) and describing a philosophy of liberality in terms of authorizing amendments to pleadings).

MOTION TO AMEND THE ANSWER OF
RESPONDENT PUGET SOUND ENERGY,
INC. - 2

[07771-0100/011411, PSE, Motion to Amend the Answer of Respondent, 12-5-01.doc]

PERKINS COIE LLP
One Bellevue
Center, Suite
1800
411 - 108th
Avenue Northeast
Bellevue, WA
98004 - 5584
(425) 453-
6980

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

of the defense as required under WAC 480-09-420(9)(a). PSE disagrees and has filed an answer/opposition to Public Counsel's Motion to Strike. However, if the Commission grants Public Counsel's motion, then, pursuant to WAC 480-02-425(5), PSE should be allowed an opportunity to amend its answer to Public Counsel's complaint and to provide a more detailed description of the facts supporting these defenses.

6. A copy of the proposed amended answer, with changes marked, is attached hereto.

II. PRAYER FOR RELIEF

7. For the reasons set forth above, PSE respectfully requests that, if the Commission grants Public Counsel's Motion to Strike in this docket, the Commission grant PSE's motion to amend its answer to Public Counsel's complaint.

DATED: December ____, 2001

PERKINS COIE LLP

By _____
Steven C. Marshall
William R. Maurer
Sheree Strom Carson
411 - 108th Avenue, NE, Suite 1800
Bellevue, Washington 98004-5584
Attorneys for Puget Sound Energy, Inc.

MOTION TO AMEND THE ANSWER OF
RESPONDENT PUGET SOUND ENERGY,
INC. - 3

[07771-0100/011411, PSE, Motion to Amend the Answer of Respondent, 12-5-01.doc]

PERKINS COIE LLP
One Bellevue
Center, Suite
1800
411 - 108th
Avenue Northeast
Bellevue, WA
98004 - 5584
(425) 453-
6980

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Motion to Amend the Answer of Respondent Puget Sound Energy, Inc. upon all parties of record in this proceeding, by mailing with postage prepaid to:

Sally J. Johnston
Assistant Attorney General
1400 S. Evergreen Park Drive, S.W.
P.O. Box 40128
Olympia, WA 98504-0128

Simon ffitc
Office of the Attorney General
Public Counsel
900 - 4th Avenue, Suite 2000
Seattle, WA 98164

Melinda J. Davison
S. Bradley Van Cleve
Davison Van Cleve, P.C.
1000 SW Broadway, Suite 2460
Portland, OR 97205

Ken Canon
Executive Director
Industrial Customers of NW Utilities
825 NE Multnomah, Suite 180
Portland, OR 97232-2158

Donald W. Schoenbeck
Regulatory & Cogeneration Svc., Inc.
900 Washington Street, Suite 1000
Vancouver, WA 98660

Dated at _____, Washington, this _____
day of _____, 2001.

PERKINS COIE LLP
One Bellevue
Center, Suite
1800
411 - 108th
Avenue Northeast
Bellevue, WA
98004 - 5584
(425) 453-
6980

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

Pam Iverson

PERKINS COIE LLP
One Bellevue
Center, Suite
1800
411 - 108th
Avenue Northeast
Bellevue, WA
98004 - 5584
(425) 453-
6980