

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	DOCKET NO. UE-031725
Complainant,)	
)	
v.)	ORDER NO. 04
)	
PUGET SOUND ENERGY, INC.,)	
)	GRANTING LATE-FILED
Respondent.)	PETITION TO INTERVENE
.....)	

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 Settlement Stipulation approved by the Commission in Docket Nos. UE-011570 and UG-011571 authorizes the filing. The Commission conducted a prehearing conference on November 6, 2003, before Administrative Law Judge Dennis J. Moss and entered Order No. 3—Prehearing Conference on November 12, 2003.

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). Michael Alcantar and Donald Brookhyser, Alcantar & Kahl LLP, Portland, Oregon, represent the Cogeneration Coalition of Washington (CCW). Simon ffitich, 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

LATE-FILED PETITION TO INTERVENE: 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 document. No one appeared for CCW at the prehearing conference. Because CCW failed to meet the Commission’s filing requirements² and did not appear at the prehearing conference, which would have afforded CCW an opportunity to petition orally, the Commission construed CCW’s e-mail as a request for interested persons status and placed CCW on the interested persons list for this proceeding.

3 On November 17, 2003, CCW filed its “Renewed Petition To Intervene.” CCW’s Renewed Petition states: “The Presiding ALJ denied CCW intervention.” CCW

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.

² 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.

“renews its Petition, requests that the Presiding ALJ reconsider his denial, and asserts good cause for granting the Petition.”

4 Contrary to what CCW’s Renewed Petition states, the “Presiding ALJ” did not “[deny] CCW intervention.” As discussed above, CCW failed to file a timely petition to intervene in accordance with the Commission’s procedural rules, which expressly provide that “electronic transmission is not acceptable for formal correspondence or documents to be filed.” WAC 480-09-100(3)(b)(i). The Commission treated CCW’s e-mail as a request for Interested Person status, which does not require formal communication with the Commission. Order No. 3 states that the Commission’s action with respect to CCW was taken without prejudice to CCW properly 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.”

5 CCW states as “good cause” for its failure to file a timely petition to intervene that:

Counsel believed that such electronic filing was sufficient to place the request before the Commission. This belief was reinforced by the erroneous assumption that electronic filings allowed in the prior Puget general rate case would continue to be allowed in the Power Cost Adjustment case.

Again, we emphasize that the Commission does not accept electronic filings unless, in accordance with the requirements of WAC 480-09-100(3)(b)(i), the Commission expressly provides for such filing as it sometimes does “in individual cases.” There is no reason for a person interested or participating in any case to assume that electronic filing will be allowed at any stage of the proceeding. Exceptions to the Commission’s procedural rules are case-specific; the rationale for allowing an exception in one case does not necessarily exist in a

separate case. The Commission emphasizes this point to remind all parties that it is important to follow the Commission's procedural rules at all stages of the Commission's formal proceedings. It is important, too, that those who wish to be involved as parties participate at all stages of a proceeding, or seek leave to be excused from participation. Failure to attend or participate in a hearing or other stage of an adjudicative proceeding may result in default or other dispositive order under RCW 34.05.440(2), as stated in paragraph 9 of the Commission's Notice of Prehearing Conference in this proceeding.

- 6 In this instance, in light of CCW's good faith effort to comply promptly with the requirements of WAC 480-09-430 following the Commission's entry of Order No. 3, and the Commission's understanding that no party would interpose an objection to a proper motion to intervene by CCW, the Commission grants CCW's late-filed petition to intervene.

DATED at Olympia, Washington, and effective this 17th day of November 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

PARTIES' REPRESENTATIVES (*designated for service)

DOCKET NO. UE-031725

[Service Date November 17, 2003]

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