

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION)	DOCKET NO. UE-031725
)	
)	
Complainant,)	JOINT MOTION FOR CONTINUANCE OF
)	THE INDUSTRIAL CUSTOMERS OF
v.)	NORTHWEST UTILITIES AND
)	MICROSOFT CORPORATION
PUGET SOUND ENERGY, INC.)	
)	
Respondent.)	
)	

I. INTRODUCTION

Pursuant to WAC § 480-09-440, the Industrial Customers of Northwest Utilities (“ICNU”) and Microsoft Corporation (“Microsoft”) (collectively the “Joint Parties”) respectfully request a continuance of one month of the deadline for Public Counsel, Staff, and Intervenors to file Response Testimony (“Response Testimony”) in Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) Docket No. UE-031725. Good cause exists for this continuance because the current expedited schedule will not allow the Joint Parties the time that is necessary to comprehensively review the voluminous materials filed and provided in discovery by Puget Sound Energy, Inc. (“PSE” or the “Company”) in this case. A delay is necessary due to: 1) a delay in receiving and assembling the filing, 2) extended response times to discovery requests, 3) the limitation on the number of people who can review “highly confidential” information and 4) the number of issues the Joint Parties have identified in discovery. These factors have already impeded the Joint Parties’ review of this case. The

holiday season will impose further constraints. For these reasons, the four-month schedule in this case is untenable.

A one-month continuance will move the current, January 9, 2004 deadline for Response Testimony, to February 9, 2004. Neither the Joint Parties, nor any other party, has requested a continuance previously in this proceeding, and this new deadline should not prejudice any other party. To the extent PSE believes it is prejudiced, it could propose alternatives, such as bifurcating the issues regarding the Frederickson plant. The Joint Parties would not oppose testimony with respect to Frederickson only on the current schedule, if the schedule for the other issues in the case was delayed by one month.

The Joint Parties have contacted PSE, WUTC Staff, and Public Counsel regarding this request. PSE opposes the continuance. Staff and Public Counsel did not express a final position on the continuance prior to this filing. Counsel for BP West Coast Products and Federal Executive Agencies indicated that they do not oppose the Motion.

II. BACKGROUND

On October 24, 2003, PSE filed an Application for Adjustment of its Power Cost Rate pursuant to the settlement stipulation (“Stipulation”) approved by the Commission in the Company’s last general rate case. WUTC v. PSE, WUTC Docket Nos. UE-011570 and UG-011571, Twelfth Supp. Order at 3 (June 20, 2002). The Stipulation authorized PSE to file a Power Cost Only Rate filing in order to, among other things, add new resources to the base power cost rate under the Company’s power cost adjustment (“PCA”) mechanism. The Stipulation provided that “one objective of a new resource proceeding is to have the new Power Cost Rate in effect by the time the new resources would go into service.” Id. at Attachment A,

Exhibit A to Settlement Stipulation at 6. Furthermore, the Stipulation “contemplated that this review would be completed within four months.” Id. Neither Microsoft nor ICNU are signatories to the Stipulation.

The Joint Parties filed Petitions to intervene in this case on November 5, 2003 and November 6, 2003. A prehearing conference was held on November 6, 2003. At the time of its filing, PSE delivered one copy of its testimony and exhibits to ICNU’s counsel. On November 5, 2003, ICNU requested that an additional copy of PSE’s filing be provided to Don Schoenbeck, the consultant that had appeared on behalf of ICNU in Docket No. UE-011595. Due to the large amounts of confidential and highly confidential material in the filing, it was determined that, for reasons of efficiency, delivery of the filing to Mr. Schoenbeck would be delayed until a confidentiality agreement and affidavit had been executed, as required by the protective order in this Docket. On November 12, 2003, the Joint Parties filed the signature pages and affidavits of the Joint Parties’ counsel and outside consultant with the Commission and sent these documents to PSE. PSE responded that confidential portions of the filing would be sent on November 13, 2003. However, Mr. Schoenbeck did not receive the materials until November 17, 2003, and counsel did not receive them until November 18, 2003.

On the same date that ICNU filed its signature pages and affidavits required by the protective order (November 12, 2003), the Commission issued its prehearing conference order establishing a schedule in this docket, setting a date for hearing, and granting the ICNU and Microsoft petitions to intervene. Consistent with the Stipulation, the schedule in this Docket provides for an approximate four-month review of PSE’s filing. In addition, in recognition of the expedited schedule, the Commission adopted a recommendation to shorten the response time

for data requests from ten business days to five business days. Discovery has been taking place with the informal agreement that responses will be provided by email on the due date, with hardcopies sent by overnight delivery. Also on November 12, 2003, PSE filed with the WUTC certain confidential exhibits that were omitted from the Company's October 24, 2003 filing.

ICNU has submitted two sets of data requests in this Docket. The First Set of Data Requests requested PSE's Data Responses to all parties. The First Set was submitted to PSE on November 20, 2003, with a response due on December 1, 2003. Counsel and the consultant for the Joint Parties received PSE's responses to these requests one day late, on December 2, 2003. The materials responsive to ICNU's First Set included certain workpapers and databases that were imperative to review PSE's filings. Only one set of CD-ROMs including certain information responsive to the Data Requests was available on December 2, 2003, and it was provided to Joint Parties' consultant, but not the Joint Parties' attorneys. It was on this date, over one month into the four-month schedule, that the consultant for the Joint Parties could begin to review the Company's filing in an effective manner. Counsel for the Joint Parties did not receive these CD-ROMs until December 5, 2003. Also on December 5, 2003, the Joint Parties received a supplemental response to the First Set, which included certain responses that had been "inadvertently omitted" from the original response.

ICNU submitted its Second Set of Data Requests to PSE on November 25, 2003, with responses due on December 4, 2003. ICNU received the responses to these requests via email on December 4, 2003, with hardcopies delivered on December 5, 2003.

PSE has produced a voluminous amount of data already in this case. The data fills twelve CD-ROMs. Eight of the CD-ROMs have been designated as highly confidential.

PAGE 4 – JOINT MOTION FOR CONTINUANCE OF ICNU AND MICROSOFT

According to the protective order, only one consultant may review the highly confidential materials, which limits the ability of a party to dedicate additional resources to reviewing the data. The huge amount of data designated highly confidential has slowed the Joint Parties' review in this case.

The Stipulation contemplates a quick review in this case based on the need to add a new resource to rates at the time of its in service date. While this case does involve the addition of a new resource, the costs of the Frederickson plant represent a small part of the case. In fact, Frederickson represents less than 30 percent of the requested \$64 million rate increase.

Finally, this proceeding may be expanded to address additional issues. The Commission currently is conducting a prudency review of PSE's 2003 power cost adjustment mechanism report filed in Docket No. UE-031389 ("PSE PCA Audit"). While many issues in the PSE PCA Audit may be settled, the parties announced in a prehearing conference on December 11, 2003, that issues related to fuel costs for Tenaska and Encogen/Cabot will not be settled. In the PSE PCA Audit case, a Prehearing Conference has been set for December 18, 2003. One proposed issue for that prehearing conference is whether to move the Tenaska and Encogen/Cabot issues into this proceeding. Adding the Tenaska and Encogen/Cabot issues would increase the complexity of this proceeding and further support a one-month continuance of the schedule.

Despite the various measures adopted in this docket to facilitate an expedited review, it is now apparent to the Joint Parties that a comprehensive review of the information provided by PSE in this case and preparation of testimony cannot be completed by the current January 9, 2004 deadline for Response Testimony.

PAGE 5 – JOINT MOTION FOR CONTINUANCE OF ICNU AND MICROSOFT

III. ARGUMENT

WAC § 480-09-440 provides that “the Commission may grant a continuance if the requesting party demonstrates good cause.” The continuance requested by the Joint Parties is necessary and appropriate, and good cause exists for the Commission to extend the deadline for Response Testimony. Although the expedited schedule in this Docket was adopted based on the four-month schedule suggested in the Stipulation, nothing in the Stipulation imposes a definitive requirement that this case be completed in a four-month timeframe. Indeed, the Stipulation “contemplated” that this review would be completed within four months and stated that “one objective” of a Power Cost Only Rate proceeding is to have the new power cost rate in effect by that time. However, neither of these suggestions requires a Commission order by a certain date.

In an expedited proceeding that is to take place over the holidays such as this one, every day counts and any delay in review or access to information compromises a party’s ability to identify issues and formulate a position with respect to the request at hand. As described herein, a number of factors have impeded the Joint Parties’ ability to effectively review the information provided by PSE. In addition, the scope of the issues far exceeds the addition of one new resource. Good cause exists to extend the deadline for Response Testimony in this Docket. Rigid adherence to the four-month schedule suggested in the Stipulation is unnecessary, and will compromise the ability of the Parties and the Commission to completely review the issues.

A. The Abundance of Information Designated “Highly Confidential” in this Docket Has Delayed the Joint Parties’ Review

The protective order issued by the Commission in this Docket allows PSE to designate certain information as “highly confidential,” warranting precautions above and beyond those included for information that is merely “confidential.” Although the Joint Parties

recognize the importance of maintaining the confidentiality of information in this Docket, the designation of information as “highly confidential” has delayed the Joint Parties’ review in this Docket. Pursuant to the Protective Order, any counsel or consultant that seeks confidential information in this docket is required to execute a confidentiality agreement. WUTC v. PSE, WUTC Docket No. UE-031725, Order No. 02 at 7 (Oct. 29, 2003). However, only one counsel and consultant per party is allowed to receive “highly confidential” information and this authority does not apply to the staff of those individuals. Individuals seeking highly confidential information are required to execute both a confidentiality agreement and an affidavit to obtain that authority.

The Joint Parties were unable to gather and file the signature pages and affidavits that all counsel and consultants are required to execute to receive the confidential and highly confidential portion of the filing in this Docket until November 12, 2003. Even after these documents were filed, Mr. Schoenbeck did not receive the filing until November 17, 2003. Counsel for the Joint parties did not receive confidential and highly confidential documents until November 18, 2003. The designation of eight CD-ROMs of data as highly confidential, combined with the limitation on the number of experts who can review the data, has significantly slowed the review process. The highly confidential designation apparently has caused problems for other parties as well. On November 25, 2003, Public Counsel filed an objection to the “highly confidential” mechanism of the protective order and sought interlocutory review of the protective order. The Commission recently amended the protective order to resolve Public Counsel’s concerns. Docket No. UE-031725, Order No. 2.

Mr. Schoenbeck's review of the highly confidential information was further delayed by the restrictions on access to such information under the protective order. Mr. Schoenbeck was out of town and unable to review the information following his receipt of the complete filing. Initially, Mr. Schoenbeck's staff was unable to review the highly confidential information.¹ Although one other person has been permitted to review a portion of the highly confidential data, the designation of eight CD-ROMs as highly confidential data continues to present problems.

B. Discovery Delays Have Impeded the Joint Parties' Ability to Effectively Review Pertinent Issues

Discovery delays also have delayed the Joint Parties' review. The response time for data request in this Docket has been shortened to five days; however, as described above, that response within that timeframe is not always possible. The workpapers and spreadsheets supporting PSE's filing are imperative to understanding the Company's request. ICNU requested much of this supporting information through its First Set of Data Requests to PSE on November 20, 2003. Because the response time for this request extended over the Thanksgiving holiday, neither counsel nor Mr. Schoenbeck receive the response to this request until December 2, 2003. A supplemental response, consisting of materials that were "inadvertently omitted," was not received until December 5, 2003. For the Commission's convenience, a timeline is attached with the relevant dates.

Some of the spreadsheets included on the nine CD-ROM disks provided in response to ICNU's First Set and spreadsheets provided in response to other data requests merely

¹ PSE recently has allowed another consultant who works with Mr. Schoenbeck to review highly confidential material that related to an Aurora model run.

state critical values without indicating the formula that was used to arrive at those values. The failure to include such basic information in the response will substantially lengthen the time required for Joint Parties' analytical effort in this case. Furthermore, such incomplete responses require follow-up data requests to assess the appropriateness of the values in question. This creates further delay.

In essence, the Joint Parties did not receive information supporting some of the most fundamental aspects of the Company's filing until December 2, 2003, over one month into the four-month schedule, and only five weeks from the due date for Response Testimony. Although receipt of these workpapers allowed the Joint Parties to begin to effectively review PSE's case, obtaining the most basic information that is necessary to critically analyze PSE's filing will require additional data requests. Responses to these data requests will likely be delayed by the Christmas Holiday.

C. The Joint Parties Cannot Effectively Address the Number of Issues Presented in this Docket Prior to the Deadline for Response Testimony

The discovery process has resulted not only in an overwhelming amount of data, but also has revealed an increasing number of issues that were not apparent prior to the commencement of discovery. Most importantly, this case was billed as a case to add a new resource, there are many other issues driving the requested rate increase. These other issues will require further investigation that cannot effectively be concluded by the January 9, 2004 deadline.

The Joint Parties are still reviewing PSE's filing and discovery responses; nevertheless, it is already apparent that the following issues must be addressed in testimony: 1) the replacement costs associated with the White River Facility and the loss of the Mid-C

contracted for capability; 2) factors causing the market price increase in power cost; 3) Tenaska Power Costs; 4) projected generation for March Point and Sumas; 5) Snoqualmie Relicensing Costs; and 6) Colstrip availability. All of these issues require further investigation, including additional data requests, before the Joint Parties can adequately formulate Response Testimony. Thus, the issues related to the Frederickson plant constitute only one part of the case. Due to the number and complexity of these issues, the January 9, 2004 deadline for Response Testimony should be changed.

IV. CONCLUSION

The Joint Parties have made an effort to avoid requesting a continuance in this case by reviewing the information that was available, initiating discovery in a timely fashion, and communicating with PSE regarding the receipt of outstanding information. Now, however, it is apparent from the extraordinary number of issues presented in the case, the volume of information, the delays that have already occurred, and the fact that the holidays will impose further constraints, that the January 9, 2004 due date for Response Testimony is unworkable. Without this continuance, the Joint Parties will be prejudiced in their ability to prepare their Response Testimony and the Commission's review in this case will suffer. For all of these reasons, good cause exists to extend the deadline for Response Testimony in this Docket to February 9, 2004. In the alternative, the Joint Parties propose that the due date for issues related to Frederickson stay at January 9, 2004, but the due date relating to testimony on all other issues be moved to February 9, 2004.

WHEREFORE, the Joint Parties respectfully request that the Commission grant this Motion for Continuance.

DATED this 11th day of December, 2003.

Respectfully Submitted,

Melinda J. Davison
Davison Van Cleve, P.C.
1000 S.W. Broadway Ave., Suite 2460
Portland, OR 97205
(503) 241-7242 (phone)
(503) 241-8160 (fax)
mail@dvclaw.com

Of Attorneys for Microsoft
Corporation

S. Bradley Van Cleve
Davison Van Cleve, P.C.
1000 S.W. Broadway Ave., Suite 2460
Portland, OR 97205
(503) 241-7242 (phone)
(503) 241-8160 (fax)
mail@dvclaw.com

Of Attorneys for the Industrial Customers of
Northwest Utilities