

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UE-220066/UG-220067 and
UG-210918 (Consolidated)

PUGET SOUND ENERGY'S HEARING
AND EXHIBIT OBJECTIONS

In the Matter of the Petition of

PUGET SOUND ENERGY

For an Order Authorizing Deferred
Accounting Treatment for Puget Sound
Energy's Share of Costs Associated with the
Tacoma LNG Facility

I. INTRODUCTION

1. Puget Sound Energy ("PSE") hereby requests the presiding officer 1) limit cross examination by the Coalition of Eastside Neighbors for Sensible Energy ("CENSE") to party representatives who have properly appeared in the proceeding and 2) exclude the following proposed cross-examination exhibits designated for PSE witness Dan'l R. Koch because Mr.

Koch neither prepared the documents designated as cross examination exhibits nor does he have first-hand knowledge of the exhibits. Therefore, he lacks foundation to be questioned on the exhibits and the ability to authenticate such exhibits. Several are also irrelevant to the settlement before the Commission. The exhibits are as follows: Exh. DRK-28X, Exh. DRK-30X, Exh. DRK-31X, Exh. DRK-32X, Exh. DRK-33X, and Exh. DRK-34X.^{1 2}

II. BACKGROUND

2. On September 21, 2022, Administrative Law Judge Michael Howard requested that parties submit written objections to the admissibility of exhibits or testimony in advance where applicable, by September 28. PSE submits these objections pursuant to that request, WAC 480-07-375(1)(d) and WAC 480-07-470(4).
3. On September 23, 2022, CENSE filed with the Commission, but did not serve,³ a set of cross examination exhibits identified for PSE witness Dan'l R. Koch, as Exh. DRK-28X through Exh. DRK-34X. Pursuant to WAC 480-07-360(6)-(8), PSE notified CENSE of the need to serve documents but was told by Richard Lauckhart that all documents are available on the Commission website and should be accessed there.⁴ Mr. Lauckhart is not the party

¹ Pursuant to Administrative Law Judge Howard's email to the parties on September 27, these numbers may be adjusted to Exh. DRK-29X, Exh. DRK-31X, Exh. DRK-32X, Exh. DRK-33X, Exh. DRK-34X, and Exh. DRK-35X, but that has not been confirmed as of the timing of filing.

² By submitting these objections, PSE in no way waives its right to raise additional objections at the Settlement Hearing.

³ CENSE's Certificates of Service filed on September 21 and 23, respectively, both state their exhibits were served on the parties by "electronic mail" but that is incorrect. PSE did not receive service emails from CENSE for those materials.

⁴ See Attachment A.

representative for CENSE. He is a California-based expert witness for CENSE. *See* Prefiled Testimony of Richard Lauckhart, Exh. RL-1T at 5:11-12. Despite this fact, all CENSE correspondence relating to these exhibits has come through Mr. Lauckhart. Upon information and belief, PSE understands that Mr. Lauckhart plans on cross examining Mr. Koch and other witnesses in the case, despite not being CENSE’s designated representative in this proceeding. *See* Notice Acknowledging CENSE’s Notice of Withdrawal (June 23, 2022) (designating Norman Hansen as a CENSE representative in this proceeding).

III. OBJECTIONS

4. CENSE has showed an intention to use its expert witness, Mr. Lauckhart, to cross examine Mr. Koch and other witnesses, rather than conducting cross examination by the persons granted permission by the presiding officer to act as its representative. A witness who is not properly authorized to act in a representative capacity should be prohibited from appearing as a party representative at the hearing. As discussed in more detail below, the Commission should require any cross examination by CENSE to be conducted by its party representative, Norman Hansen, and preclude CENSE’s expert witness from conducting cross examination on parties.

5. Further, CENSE has proposed multiple exhibits for cross examination of PSE witness Dan’l R. Koch that do not meet evidentiary requirements for a Commission proceeding and should therefore be excluded.

A. Cross Examination by CENSE Should Be Conducted by CENSE's Party Representative, not by its Expert Witness

6. Upon information and belief, Mr. Lauckhart intends on representing CENSE in the Settlement Hearing before the Commission, including cross examining witnesses. The presiding officer should require a CENSE representative who has properly appeared in this proceeding to represent CENSE and cross examine witnesses. WAC 480-07-345(1)-(2) sets forth the requirements for who may appear before the Commission as a representative of a party, including that the person seeking to appear must meet at least one of the following qualifications:

- (a) Membership in good standing in the Washington State Bar Association;
- (b) Admission to practice, in good standing, before the highest court of any other state or the District of Columbia;
- (c) Status as an officer or employee of a party or person seeking party status, if granted permission by the presiding officer to represent the party; or
- (d) Status as a legal intern admitted to limited practice under Rule 9 of the Washington state supreme court's admission to practice rules. No legal intern, however, may appear without the presence of a supervising lawyer unless the presiding officer approves the intern's sole appearance in advance.

This standard ensures that either an attorney with an ethical obligation to represent the interests of the party appears before the Commission, or an officer or employee who has a fiduciary obligation to the organization, is properly expressing the positions of the party or advocating on behalf of a party through acts such as cross examination.

7. Mr. Hansen, as President of CENSE, clearly meets those requirements and in his testimony is clear he is the CENSE representative in this proceeding. *See* Prefiled Testimony

in Opposition to Settlement of Energize Eastside of Norm Hansen, Exh. NH-1T at 3:27. Mr. Lauckhart, however, meets none of these requirements. Rather, by his own admission, he was “retained as a Consultant by CENSE to provide testimony regarding the Prudence of Energize Eastside” and works today as “a power system consultant.”⁵ Based on Mr. Lauckhart’s professional qualifications, Mr. Lauckhart is not qualified to serve as CENSE’s representative. He retired from full-time work in 2011, resides in California, and has worked part-time as a consultant since that time. His role for CENSE is appropriately that of a witness, not as a representative cross-examining other witnesses in a hearing. Permitting Mr. Lauckhart to serve as both a witness for CENSE while cross-examining witnesses and representing CENSE at the hearing violates WAC 480-07-345(1)-(2) because it would allow an unauthorized person to represent CENSE in the proceeding.

8. Moreover, allowing Mr. Lauckhart to both serve as a witness and represent CENSE before the Commission in the Settlement hearing violates the axiomatic “advocate-witness” rule which prohibits an attorney (or in this case an *unauthorized* party representative) from appearing as both a witness and an advocate in the same litigation. *See State v. Lindsay*, 180 Wn.2d 423, 437, 326 P.3d 125, 133 (2014). Except for under some narrow circumstances, these roles are “mutually exclusive” to “protect[] the integrity of the fact-finding process.” *United States v. Prantil*, 764 F.2d 548, 554-55 (9th Cir. 1985) (cited by *Lindsay*). The well-defined roles of witness and representative ensure that representatives cannot make

⁵ Exh. RL-1T at 5:13-14, 6:4-5.

unchecked factual assertions while advocating for their client and that witness testimony is not skewed by advocacy. *See id.* at 553-54.

9. Allowing Mr. Lauckhart to serve as a witness and a party representative would confuse these roles. It would allow Mr. Lauckhart an additional platform to advocate his positions and would set a precedent ripe for manipulation where a party could designate their witness to cross examine opposition witnesses and use the time expressing statements omitted from their own testimony rather than questioning the testimony of the witness. Given CENSE's exhibited difficulty complying with Commission rules in this proceeding, it is important that Mr. Hansen's and Mr. Lauckhart's roles be appropriately defined to ensure order during the Settlement Hearing. PSE requests the presiding officer exclude Mr. Lauckhart or any non-authorized party representative from representing CENSE before the Commission at the Settlement Hearing.⁶

B. Objections to Cross Examination Exhibits Proposed by CENSE

10. WAC 480-07-470(4) allows the presiding officer to "receive evidence as provided by RCW 34.05.452" consistent with the rules of evidence in a proceeding governed by the Administrative Procedures Act. Washington State Rule of Evidence ("ER") 901(b)(1) requires an exhibit to be authenticated by a witness with knowledge. Mr. Koch did not

⁶ While Mr. Hansen also provided testimony, his testimony is very brief (approximately three pages), has no exhibits, and defers to Mr. Lauckhart's testimony on factual issues relating to Energize Eastside prudency. In contrast, Mr. Lauckhart filed two separate testimonies and over forty exhibits. PSE does not have the same concern with Mr. Hansen because his role has been primarily representing CENSE in the proceeding while Mr. Lauckhart has served as the expert witness for CENSE.

prepare and has no knowledge of the cross-examination exhibits listed below. Asking Mr. Koch to authenticate or testify as to these exhibits is improper because he lacks the necessary personal knowledge to testify as to the statements provided by other parties, most notably CENSE or Mr. Lauckhart. *See* ER 602. Several are also irrelevant under ER 401.

1. Exh. DRK-28X: Commission Staff Responses to CENSE Data Requests 001-003 to Commission Staff.

11. CENSE submitted Exh. DRK-28X as a potential cross examination exhibit for Mr. Koch.

The exhibit contains three data requests issued by CENSE to Commission Staff, and Commission Staff's responses to those data requests. The exhibit contains no statements from Mr. Koch, no testimony from Mr. Koch, nor is the data request directed at PSE. ER 901(b)(1) requires an exhibit to be authenticated by a witness with knowledge. Asking Mr. Koch to authenticate this exhibit for admission is improper because neither he nor PSE drafted it. To the extent CENSE has questions about Commission Staff's responses to CENSE data requests, those questions should be directed to Commission Staff, not Mr. Koch. Additionally, this exhibit contains data requests not related to testimony provided in support of the settlement and is thus irrelevant under ER 401. Exh. DRK-28X should be excluded.

2. Exh. DRK-30X: Emails between Mr. Lauckhart and employees at North American Electric Reliability Corporation ("NERC") and the Western Electricity Coordinating Council ("WECC") regarding compliance audits.

12. CENSE submitted Exh. DRK-30X as a potential cross examination exhibit for Mr. Koch.

Exh. DRK-30X contains emails between Mr. Lauckhart and employees at NERC and

WECC. The exhibit contains no statements from Mr. Koch and no testimony from Mr. Koch. ER 901(b)(1) requires an exhibit to be authenticated by a witness with knowledge. Asking Mr. Koch to authenticate this exhibit for admission is improper. Mr. Koch did not write these emails, he did not receive these emails, he did not participate in the discussion between NERC, WECC and Mr. Lauckhart, nor was Mr. Koch copied on any of these emails to understand the context. Asking Mr. Koch to testify as to this exhibit is improper because he lacks the necessary personal knowledge to testify as described above. *See* ER 602. Exh. DRK-30X should be excluded.

3. Exh. DRK-31X: CENSE responses to PSE Data Requests Nos. 001-005 to CENSE.

13. CENSE submitted Exh. DRK-31X as a potential cross examination exhibit for Mr. Koch. Exh. DRK-31X contains CENSE responses to PSE data requests. The exhibit contains no statements from Mr. Koch, no testimony from Mr. Koch, nor is the data request directed at PSE. ER 901(b)(1) requires an exhibit to be authenticated by a witness with knowledge. Mr. Koch has no knowledge regarding CENSE's responses. Asking Mr. Koch to authenticate this exhibit for admission is improper. Furthermore, asking Mr. Koch to testify as to this exhibit is improper because he lacks the necessary personal knowledge to testify as to the statements provided by CENSE. *See* ER 602. If CENSE wanted to add this into the record, it should have done so in its response testimony to the Settlement. Exh. DRK-31X should be excluded.

4. Exh. DRK-32X: Mr. Lauckhart's Declaration before the City of Bellevue Hearing Examiner on March 16, 2019.

14. CENSE submitted Exh. DRK-32X as a potential cross examination exhibit for Mr. Koch. Exh. DRK-32X is a declaration by Mr. Lauckhart before the City of Bellevue Hearing Examiner as part of PSE's Conditional Use Permit application before the City of Bellevue. The exhibit contains no statements from Mr. Koch and no testimony from Mr. Koch. Rather, it is the sworn testimony of Mr. Lauckhart in an entirely separate proceeding. Asking Mr. Koch to testify as to this exhibit is improper because he lacks the necessary personal knowledge to testify as to the statements provided by Mr. Lauckhart. *See* ER 602. The best person to testify as to the statements of Mr. Lauckhart, is Mr. Lauckhart. Mr. Lauckhart could have included this exhibit with his opposition to the settlement testimony, but he did not. It is improper to now bring it into evidence as a cross examination exhibit for Mr. Koch, when Mr. Koch is not the author, cannot authenticate the exhibit, and does not have personal knowledge of information contained in the exhibit. Additionally, this exhibit should be excluded as irrelevant and immaterial to the settlement hearing under ER 401. The Commission is not considering PSE's Conditional Use Permit application, and the exhibit is therefore immaterial. Exh. DRK-32X should be excluded.

5. Exh. DRK-33X: Emails between Mr. Lauckhart and a Director in the Development Services Department for the City of Bellevue regarding the City of Bellevue's review of an Energize Eastside permit.

15. CENSE submitted Exh. DRK-33X as a potential cross examination exhibit for Mr. Koch. Exh. DRK-33X contains emails between Mr. Lauckhart and City of Bellevue employees. The exhibit contains no statements from Mr. Koch, no testimony from Mr. Koch, nor do the

emails contain statements made by PSE. ER 901(b)(1) requires an exhibit to be authenticated by a witness with knowledge. Mr. Koch has no knowledge regarding this response and request. Asking Mr. Koch to authenticate this exhibit for admission is improper. Furthermore, asking Mr. Koch to testify as to this exhibit is improper because he lacks the necessary personal knowledge to testify as to the statements provided by staff for the City of Bellevue. *See* ER 602. Additionally, this exhibit contains information not related to testimony provided in support of the settlement and should be excluded as irrelevant and immaterial to the settlement hearing under ER 401. The emails are related to PSE's Conditional Use Permit application before the City of Bellevue which is not at issue before the Commission. Exh. DRK-33X should be excluded.

6. Exh. DRK-34X: Emails between Mr. Lauckhart and the Newcastle City Clerk regarding a permit condition.

16. CENSE submitted Exh. DRK-34X as a potential cross examination exhibit for Mr. Koch. Exh. DRK-34X contains emails between Mr. Lauckhart and the Newcastle City clerk. The exhibit contains no statements from Mr. Koch, no testimony from Mr. Koch, nor was a PSE representative even included on the email. ER 901(b)(1) requires an exhibit to be authenticated by a witness with knowledge. Mr. Koch has no knowledge regarding this email. Asking Mr. Koch to authenticate this exhibit for admission is improper. Furthermore, asking Mr. Koch to testify about this exhibit is improper because he lacks the necessary personal knowledge to testify as to emails between Mr. Lauckhart and the City of Newcastle. *See* ER 602. Exh. DRK-34X should be excluded.

IV. CONCLUSION

17. Mr. Lauckhart is an expert witness for CENSE, not a party representative, and should be excluded from cross-examining witnesses at the hearing. To the extent CENSE desires to cross examine witnesses, it should be done by its party representative, Norman Hansen.
18. As set forth above, none of the exhibits identified above contain statements by PSE representatives or are documents prepared by PSE. Accordingly, PSE objects to the admission and use of exhibits DRK-28X, DRK-30X, DRK-31X, DRK-32X, DRK-33X and DRK-34X to cross examine Mr. Koch.

RESPECTFULLY SUBMITTED this 28th day of September, 2022.

PERKINS COIE LLP

By /s David Steele
Sheree Strom Carson, WSBA #25349
Donna L. Barnett, WSBA #36794
Pamela J. Anderson, WSBA #37272
David S. Steele, WSBA #45640
Byron C. Starkey, WSBA #55545

Attorneys for Puget Sound Energy

Attachment A

From: [Richard Lauckhart](#)
To: [Starkey, Byron \(BEL\)](#)
Cc: [Norm Hansen](#); [Carson, Sheree S. \(BEL\)](#)
Subject: Re: CENSE Cross Exhibits and CENSE Cross Exhibit List e-filed on September 22, 2022
Date: Monday, September 26, 2022 2:04:24 PM

Mr Starkey

I am not home so can not send them to you now. But they are posted on the WUTC website for UE-220066z You can go there and get them.

Richard Lauckhart
916-769-6704

Sent from my iPhone

On Sep 26, 2022, at 11:58 AM, Starkey, Byron (BEL)
<ByronStarkey@perkinscoie.com> wrote:

Mr. Hansen and Mr. Lauckhart,

We still have not been served with copies of CENSE's cross examination exhibits. The WUTC does not serve PSE with copies when they are uploaded, we need you to send these to us. Please provide these as noted in the COS.

Thanks,
Byron

Byron Starkey | **Perkins Coie LLP**
10885 N.E. Fourth Street Suite 700
Bellevue, WA 98004-5579
D. +1.425.635.1458

From: Richard Lauckhart <lauckjr@hotmail.com>
Sent: Wednesday, September 21, 2022 8:58 AM
To: Starkey, Byron (BEL) <ByronStarkey@perkinscoie.com>; Norm Hansen <hansennp@aol.com>
Cc: Carson, Sheree S. (BEL) <SCarson@perkinscoie.com>
Subject: Re: CENSE Cross Exhibits and CENSE Cross Exhibit List e-filed on September 22, 2022

Byron-

Records at WUTC is in the process of posting the 10 documents on their website for UE-220066. That should be done in the next couple of hours. I had a little problem using their portal, but they have everything they need now to get these

posted. Let me know if you do not get these soon. There are a few large files.

Richard Lauckhart
916-769-6704

From: Starkey, Byron (BEL) <ByronStarkey@perkinscoie.com>
Sent: Wednesday, September 21, 2022 8:39 AM
To: Richard Lauckhart <lauckjr@hotmail.com>; Norm Hansen <hansennp@aol.com>
Cc: Carson, Sheree S. (BEL) <SCarson@perkinscoie.com>
Subject: RE: CENSE Cross Exhibits and CENSE Cross Exhibit List e-filed on September 22, 2022

Mr. Hansen and Mr. Lauckhart,

We have not received copies of the identified exhibits as noted in the certificate of service or the estimate of cross exam time. Would you please be able to provide copies?

Thanks,
Byron

Byron Starkey | Perkins Coie LLP
10885 N.E. Fourth Street Suite 700
Bellevue, WA 98004-5579
D. +1.425.635.1458

From: Richard Lauckhart <lauckjr@hotmail.com>
Sent: Wednesday, September 21, 2022 2:42 AM
To: michael.howard@utc.wa.gov; Norm Hansen <hansennp@aol.com>; Richard Lauckhart <lauckjr@hotmail.com>
Cc: gloria.smith@sierraclub.org; Carson, Sheree S. (BEL) <SCarson@perkinscoie.com>; Lisa.Gafken@atg.wa.gov; rita.liotta@navy.mil; Jon Piliaris (PSEDRS) <Jon.Piliaris@pse.com>; jeff.roberson@utc.wa.gov; Ben.mayer@klgates.com; Simon ffitch <simon@ffitchlaw.com>; ybaldwin@parsonsbehle.com; tcp@dvclaw.com; jhasselman@earthjustice.org; dex@smxblaw.com; bhc@dvclaw.com; lauren@nwenergy.org; Yochi Zakai <yzakai@smwlaw.com>; Verna.bromley@kingcounty.gov; jparekh@earthjustice.org; lisa.anderson@puyalluptribe-nsn.gov; nthomas@omwlaw.com; alex.kronauer@walmart.com; sjm@dvclaw.com; Jim Dennison <jim.dennison@sierraclub.org>; afuller@omwlaw.com; kari.vanderstoep@klgates.com; betsy.demarco@utc.wa.gov; Betty Ann (UTC) <betty.erdahl@utc.wa.gov>; Amanda Goodin <agoodin@earthjustice.org>; khojasteh.davoodi@navy.mil; kboehm@BKLawfirm.com; Barnett, Donna L. (BEL) <DBarnett@perkinscoie.com>; khiggins@energystrat.com; jkylercohn@BKLawfirm.com; Steele, David S. (BEL) <DSteele@perkinscoie.com>; jog@dvclaw.com; brmullins@mwanalytics.com;

scm@smxblaw.com; Thomas, Ryan C. (BEL) <RThomas@perkinscoie.com>; *PSEDERS <psedrs@PerkinsCoie.com>; carol@ffitchlaw.com; Chanda.Mak@atg.wa.gov; larry.r.allen@navy.mil; dirk.middents@klgates.com; amy@nwenergy.org; nina.suetake@atg.wa.gov; harry.fukano@utc.wa.gov; nash.callaghan@utc.wa.gov; joe.dallas@utc.wa.gov; lance@aegisinsight.com; daniel.teimouri@utc.wa.gov; com@dvclaw.com; Ann.Paisner@atg.wa.gov; Don Marsh <don.m.marsh@hotmail.com>; stephanie.chase@atg.wa.gov; Starkey, Byron (BEL) <ByronStarkey@perkinscoie.com>; Shay.Bauman@atg.wa.gov; Sara L. Breckenridge <breckenridge@smwlaw.com>; brice.hartman@atg.wa.gov; mariel@frontandcentered.org; raul.martinez@kingcounty.gov; Anderson, Pamela J. (BEL) <PJAnderson@perkinscoie.com>; mhentrup@earthjustice.org; lwb@smxblaw.com; sam.stiltner@puyalluptribe-nsn.gov; jbieber@energystrat.com; Carol Cohoe <Carol@aramburu-eustis.com>

Subject: CENSE Cross Exhibits and CENSE Cross Exhibit List e-filed on September 22, 2022

To Judge Howard and all Parties in UE-220066-

See attached CENSE Certificate Of Service and CENSE Cover Letter of CENSE Cross Exhibits and CENSE Cross Exhibit List efiled on Sept 22, 2022. The COS is signed by Norm Hansen.

You can contact either Norm Hansen or me if you have questions.

Richard Lauckhart
Expert Witness for CENSE
916-769-6704

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