

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

**Docket UE-240004 and Docket UG-
240005 (*consolidated*)**

**PUGET SOUND ENERGY'S
RESPONSE TO JOINT
ENVIRONMENTAL ADVOCATE'S
MOTION FOR LEAVE TO FILE
REVISED TESTIMONY**

I. INTRODUCTION

- I.* In accordance with WAC 480-07-375(4), Puget Sound Energy, Inc. (“PSE”) responds to the Motion to Revise Testimony filed by Joint Environmental Advocates (“JEA”) in this docket on October 18th, 2024 (the “Motion”). JEA’s motion seeks to revise testimony at a belated date with no opportunity for parties to respond and it removes information related to a contested issue. This will not help the Washington Utilities and Transportation Commission (“Commission”) reach an informed decision, it will only create confusion to an ongoing debate. For these reasons, PSE opposes JEA’s Motion and respectfully requests that Commission deny the Motion.

II. BACKGROUND

2. JEA’s October 18th, 2024, Motion requests leave to remove the entirety of page 16 and lines 1 – 8 of page 17 of the Cross-Answering of William A. Gehrke, Exh. WAG-4T. This section of the testimony addresses the impact of the Clean Generation Resource Tracker (“CGR Tracker”). The proposed revision removes four questions and answers relating to cost recovery tools in CETA, deferrals to track costs, possible issues deferrals present to customers, and PSE’s projected response if the CGR Tracker is denied.¹

3. The Motion was filed after the discovery deadline, and just two weeks before the evidentiary hearing for this case on November 4, 2024. JEA argues the revision is necessary because it “may not have fully captured the nuances” of CETA deferrals.² JEA witness Gehrke realized the issue after reviewing the cross-answering testimony of other parties, which were filed on September 18, 2024.³

III. ARGUMENT

4. WAC 480-07-460(1)(a), requires a party to seek approval from the presiding officer to file revised prefiled testimony that include “substantive changes.”⁴ The party must file its motion to revise for substantive changes “as soon as practicable after discovering the need to make that change.”⁵ The Commission frequently considers the overall procedural schedule, the time

¹ Gehrke, Exh. WAG-4T at 16:1-17:8.

² Motion at ¶ 2.

³ Motion at ¶ 3.

⁴ WAC 480-07-460(1)(a)(i).

⁵ WAC 480-07-460(1)(b).

remaining for other parties to respond, and whether there is sufficient time for other parties to review the revised testimony and exhibits and provide a response as necessary.⁶ The Commission is reluctant to grant motions to file revised testimony where substantive changes occur after the deadline for rebuttal and cross-answering testimony.⁷ Such changes “foreclose[e] any realistic opportunity for the Company to submit prefiled testimony in response to these significant changes,” which generally goes against “interests of procedural due process, overall fairness, and consistency with past Commission decisions”.⁸

5. JEA’s Motion seeks to make substantive changes to its prefiled testimony only a few weeks before the evidentiary hearing, after the discovery deadline passed, and a full month after the deadline to file rebuttal and cross-answering testimony has passed.⁹ JEA’s late-filed revision muddies the waters and reduces the information the Commission may consider in making a decision. JEA’s motion should be denied.

A. JEA’s Motion is untimely and would disrupt the procedural schedule.

6. The Commission will grant motions to revise testimony where there is a significant amount of time left before the evidentiary hearing—for example, when several months remain

⁶ See *WUTC v. PacifiCorp d/b/a/ Pacific Power and Light Company*, Docket UE-230172 (consolidated), Order 06 at ¶ 10 (Nov. 29, 2023) (denying Staff’s motion for leave to file revised testimony because the motion would result in substantive changes being made after the deadline for rebuttal and cross-answering testimony, reducing fairness and due process for other parties); cf. *WUTC v. Cascade Natural Gas Corp.*, Docket UG-210755, Order 04 at ¶ 7 (Dec. 17, 2021) (granting Cascade’s motion where it was filed “well in advance of the deadline for parties to file responsive testimony”).

⁷ *WUTC v. PacifiCorp d/b/a/ Pacific Power and Light Company*, Docket UE-230172 (consolidated), Order 06 at ¶ 10 (Nov. 29, 2023).

⁸ *Id.*

⁹ *WUTC v. Puget Sound Energy*, Dockets UE-240004 and UG-230005 (consolidated) and Docket No. UE-230810, Order 07/05, Appendix A (June 6, 2024).

until the hearing.¹⁰ JEA’s motion for leave to revise testimony comes at a belated time that prejudices other parties and disrupts the procedural schedule. JEA’s Motion was filed a mere two weeks before the evidentiary hearing, scheduled for November 4-5, 2024. The deadline for filing rebuttal and cross-answering testimony was September 18, 2024—a full month removed from JEA’s motion.¹¹ A substantive change two weeks before an evidentiary hearing and after the discovery deadline is simply too late notice for the other parties to correct accordingly.¹²

7. The Motion was not filed “as soon as practicable” after discovering a possible error, as required by WAC 480-07-460(1)(b). JEA’s Motion was purportedly necessary “after reviewing the cross-answering testimony of other parties,” even though the Motion was filed a month after cross-answering testimony was filed.¹³ JEA should have reasonably discovered the nuance it wished to correct sooner and made the filing to revise the testimony earlier. Rather than revise existing testimony, JEA could provide the clarity and nuance in briefing.

¹⁰ See, e.g., *WUTC v. Cascade Natural Gas Corp.*, Docket UG-210755, Order 04 (Dec. 17, 2021) (granting Cascade’s motion for leave to file revised testimony when there was still four months until the next round of testimony and more than five months before the hearing); *WUTC v. Puget Sound Energy*, Docket UE-220066, Order 17/03 (July 8, 2022) (granting PSE’s motion when there were still three months until the hearing); *WUTC v. Cascade Natural Gas Corp.*, Docket UG-170929, Order 04 (Mar. 9, 2018) (granting Cascade’s motion when there were still more than three months until the hearing); *WUTC v. Puget Sound Energy, Inc.*, Docket UE-090704, Order 07 (Sept. 10, 2009) (granting PSE’s motion when there were still four months until the evidentiary hearing).

¹¹ *WUTC v. Puget Sound Energy*, Dockets UE-240004 and UG-230005 (consolidated) and Docket UE-230810, Order 07/05, Appendix A (June 6, 2024).

¹² See *WUTC v. Pacificorp d/b/a/ Pacific Power and Light Company*, Docket UE-230172 (consolidated), Order 06 at ¶ 10 (Nov. 29, 2023) (denying Staff’s motion for leave to file revised testimony because the motion would result in substantive changes being made after the deadline for rebuttal and cross-answering testimony, reducing fairness and due process for other parties).

¹³ Motion at ¶ 3.

B. JEA’s testimony contains no clear error, and the revision removes important information on an issue that is contested.

8. The Commission may grant motions for leave to file revised testimony where the revision would clarify and simplify the ongoing process—for example, where the revised testimony corrects a factual error that would help ensure an accurate record for decision.¹⁴ The Commission has also granted such motions where a party withdraws an issue, and no other party objects, on the basis of simplifying the remaining evidence and reducing other parties’ burden.¹⁵ These circumstances do not exist here, because JEA seeks to withdraw multiple questions relating to a contested issue between parties. This withdrawal would serve to muddy, rather than clarify, the issue.

9. The CGR Tracker is a litigated issue in this proceeding. PSE has argued that the CGR Tracker is the optimal way to recover expenses associated with CETA clean generation resources without subjecting customers to the increased costs of deferral.¹⁶ Other parties, including JEA, have submitted testimony weighing the relative advantages and disadvantages of authorizing the CGR Tracker or using deferral balances to account for costs under CETA.¹⁷ JEA’s Motion seeks to remove a section of William Gehrke’s cross-answering testimony regarding the possible

¹⁴ *WUTC v. Puget Sound Energy, Inc.*, Docket UE-060266 and Docket UG-060267 (consolidated), Order 7 (Oct. 25, 2006) (granting motion for leave to file revised testimony where stock price was misstated to allow for “an accurate record for decision”).

¹⁵ *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049, Order 05 (Nov. 3, 2011).

¹⁶ *See, e.g.*, Free, Exh. SEF-1T and SEF-28T; Shipman, Exh. TAS-5CT; Martin, Exh. JLM-1CT.

¹⁷ *See, e.g.*, McGuire, Exh. CRM-1Tr; Mullins, Exh. BGM-1T; Gehrke, Exh. WAG-1T.

impacts of the deferral option on customers. This information meaningfully responds to this contested issue.

10. JEA does not claim that Mr. Gehrke’s testimony made any clear error. Rather, it claims that it “may not have fully captured the nuances of how the multiyear rate plan and CETA deferrals interact.”¹⁸ This is not a sufficient basis to revise testimony at this late juncture. JEA’s testimony was not required to capture every nuance of the CGR Tracker issue; instead, it provided a valid perspective on the issue. Additionally, if JEA felt that its testimony lacked nuance, it could have filed a motion to revise testimony by *adding* information and nuance. Instead, JEA has sought to “remove the incomplete answers from [Mr. Gehrke’s] testimony altogether”—reducing the ability of parties to consider the position presented.¹⁹

11. JEA should be required to include the testimony it originally submitted and it has an opportunity to clarify its stance, if necessary. Doing so preserves the fairness and due process rights of the other parties while also providing a complete record for the Commission to consider.

IV. CONCLUSION

12. JEA’s Motion is filed too late in the procedural schedule and does not seek to correct any clear error that would assist the Commission in making a determination. PSE respectfully requests the Commission deny JEA’s Motion.

¹⁸ JEA’s Motion at ¶ 2.

¹⁹ *Id.*

RESPECTFULLY SUBMITTED this 25th day of October, 2024.

PERKINS COIE LLP

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