

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,</p> <p>Complainant,</p> <p>v.</p> <p>PUGET SOUND ENERGY,</p> <p>Respondent.</p>	<p>DOCKETS UE-220066 and UG- 220067 (<i>Consolidated</i>)</p> <p>ORDER 21</p>
<p>In the Matter of the Petition of</p> <p>PUGET SOUND ENERGY</p> <p>For an Order Authorizing Deferred Accounting Treatment for Puget Sound Energy’s Share of Costs Associated with the Tacoma LNG Facility</p>	<p>DOCKET UG-210918</p> <p>ORDER 07</p> <p>GRANTING PSE’S MOTION TO STRIKE</p>

BACKGROUND

- 1 On January 31, 2022, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-60, Tariff G, Electric Service, and its currently effective Tariff WN U-2, Natural Gas. The Commission initiated an adjudication in consolidated Dockets UE-220066 and UG-220067.
- 2 On February 28, 2022, the Commission convened a virtual prehearing conference before administrative law judge Michael S. Howard.

- 3 On March 3, 2022, the Commission entered Order 03, Prehearing Conference Order and Notice of Hearing. The Commission adopted a procedural schedule for this proceeding and noticed an evidentiary hearing for October 3, 2022, and October 4, 2022. The Commission granted petitions to intervene from the Coalition of Eastside Neighbors for Sensible Energy (CENSE), among others.
- 4 On September 28, 2022, CENSE submitted a public comment in this proceeding (September 28, 2022, public comment).
- 5 On September 30, 2022, PSE filed a Motion to Strike CENSE's Comment (Motion to Strike). PSE argues that WAC 480-07-498(1) requires the Commission to receive public comment "submitted by nonparties" in connection with the proceeding. Because CENSE was granted party status, it should not be allowed to also file public comments.
- 6 On October 4, 2022, CENSE's representative of record, Norm Hansen, emailed the presiding administrative law judge. Hansen indicated, "Cense [sic] does not oppose the motion to strike the subject comment from the record."
- 7 On October 5, 2022, the Commission issued a Notice of Potential Ex Parte Communication. This notice attached CENSE's October 4, 2022, email and provided the parties an opportunity to respond to the issues it raised by October 12, 2022. No party filed a response.
- 8 On October 17, 2022, Public Counsel filed its Offer of Public Comment Exhibit, marked BR-3. Public Counsel's filing includes nine comments from CENSE witness Richard Lauckhart filed on April 7, 2022, April 8, 2022, April 9, 2022, April 10, 2022, April 11, 2022, April 12, 2022, April 13, 2022, April 29, 2022, and June 8, 2022 (Lauckhart's nine public comments).
- 9 That same day, October 17, 2022, counsel for PSE emailed the presiding administrative law judge, indicating that Exhibit BR-3 contained several comments from CENSE witness Richard Lauckhart. PSE submitted that the arguments contained in its Motion to Strike applied to Lauckhart's public comments contained within BR-3. PSE also submitted that these public comments amounted to an improper ex parte communication.
- 10 On October 18, 2022, CENSE's representative of record, Mr. Hansen, emailed the presiding administrative law judge to indicate that CENSE objected to PSE's Motion to Strike Lauckhart's public comments contained with BR-3. CENSE argued that Lauckhart submitted these comments before CENSE was granted party status.

DISCUSSION

- 11 We grant PSE’s Motion to Strike, subject to the condition noted below in paragraph 14. WAC 480-07-498(1) provides that “[t]he commission will receive as a bench exhibit any public comment submitted by nonparties in connection with an adjudicative proceeding.” As PSE correctly observes, CENSE has been granted party status in this proceeding and has been given opportunities to file testimony and exhibits. It is not appropriate for CENSE to also submit public comments, which is a provision made for non-parties. CENSE’s September 28, 2022, public comment should be struck from the record subject to the condition noted below in paragraph 14 of this Order. CENSE has indicated that it does not object to this remedy.
- 12 We find that the arguments raised in PSE’s Motion to Strike apply with equal force to the nine public comments from CENSE witness Lauckhart contained with Exhibit BR-3. Although CENSE argues that these public comments were submitted before CENSE was granted party status, this is simply incorrect. The prehearing conference in this proceeding was held on February 28, 2022, and the Commission granted CENSE party status at this conference.¹ The nine comments in question were submitted after that day, and they should be struck from the record subject to the condition noted in paragraph 14.
- 13 We do not accept PSE’s argument that CENSE’s public comments represented an improper, ex parte communication. WAC 480-07-310(1) prohibits persons with interest in a proceeding from communicating with the presiding officer “unless reasonable notice is given to all parties to the proceeding so that they may participate in, or respond to, the communication.” Public comments are included as part of the record in the proceeding, and a party may review and respond to public comments in their post-hearing brief.
- 14 Nevertheless, we acknowledge that it was improper for CENSE’s witness to file public comments when he was already providing testimony on behalf of an organization granted party status. This circumvented the normal requirements for testimony and exhibits. In the interest of providing all parties due process and to err on the side of caution, we provide notice, consistent with the remedy for ex parte communications provided in WAC 480-07-310(4), that any party may file a brief response to the matters raised by Lauckhart’s nine public comments filed in connection with BR-3. Any such comments are due by **Monday, October 31, 2022**. The Commission will strike CENSE’s public

¹ Judge Howard, TR 40:11-24.

comments from the record after October 31, 2022, to allow the parties an opportunity to review and respond to them before they are struck from the record.

ORDER

15 **THE COMMISSION ORDERS That Puget Sound Energy's Motion to Strike is GRANTED, subject to the conditions discussed in paragraph 14 of this Order.**

DATED at Lacey, Washington, and effective October 19, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael S. Howard
MICHAEL HOWARD
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.