

**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 22</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 08</p> <p>GRANTING THE PUYALLUP TRIBE’S MOTION TO STRIKE IN PART, DENYING IN PART; REOPENING THE RECORD</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 Puyallup Tribe of Indians (Puyallup Tribe or Tribe), among others.
- 4 At the October 3, 2022, evidentiary hearing in this proceeding, in response to an objection from the Puyallup Tribe, the presiding administrative law judge ordered PSE to file the full version of Dr. Libicki's Testimony. In response to that order, PSE filed revised Exhibit RJR-31r, the full version of Dr. Libicki's testimony in Pollution Control Hearings Board (PCHB) Case No. 19-087c, which includes: (a) narrative testimony in the form of written questions and answers; (b) Attachment A, the curriculum vitae of Shari Beth Libicki, Ph.D.; (c) Attachment B, the Declaration of Eri Ottersburg; (d) Attachment C, the Declaration of Matthew Stobart on Behalf of CB&I Regarding Flare Case 5; (e) Attachment D, the Declaration of Dr. Laura Skinner; and (f) the Addendum to Prepared Direct Testimony of Dr. Shari Beth Libicki on Behalf of PSE.
- 5 On October 17, 2022, the Puyallup Tribe filed a Motion to Strike PSE's Exhibit RJR-31r (Motion to Strike). The Puyallup Tribe argues that Exhibit RJR-31r raises a number of evidentiary problems, including hearsay problems, and that the revised exhibit includes addenda from additional witnesses that were not made available for cross-examination. The Tribe argues that the Commission should strike this exhibit in its entirety. If the Commission admits Exhibit RJR-31r, however, the Puyallup Tribe requests that the Commission strike the addenda and either allow the Tribe to provide excerpts of Dr. Libicki's cross-examination before the PCHB or to provide Dr. Libicki's entire cross-examination before the PCHB.
- 6 On October 24, 2022, PSE filed a Response to the Puyallup Tribe of Indian's Motion to Strike. PSE submits that it provided Exhibit RJR-31r in response to the presiding administrative law judge's ruling at the hearing, which required the Company to provide Dr. Libicki's full testimony before the PCHB. In an effort to resolve the issue, PSE proposes that the Commission order: (1) that PSE file a revised Exhibit RJR-31r that includes only the initial 169 pages of narrative questions and answers and Attachment A, Dr. Libicki's curriculum vitae, and (2) that the Tribe files an exhibit that includes the complete transcript of Dr. Libicki's cross-examination testimony at the Pollution Control Hearings Board hearing in PCHB No. 19-087C, submitted by the Tribe as Exhibit RJR-38X.

DISCUSSION

- 7 We grant the Puyallup Tribe's Motion to Strike in part and deny it in part.

8 As an initial matter, we decline to strike the entirety of Dr. Libicki’s testimony before the PCHB. This matter was addressed at the evidentiary hearing. Although the presiding administrative law judge requested that the parties provide evidentiary objections in advance of the hearing in writing, the Puyallup Tribe made an oral objection to Dr. Libicki’s testimony primarily on the grounds that it represented hearsay.¹ The presiding administrative law judge denied the Tribe’s objection but required PSE to file the entirety of Dr. Libicki’s testimony as a revised exhibit, rather than providing excerpts of that testimony.²

9 However, upon reviewing the revised Exhibit RJR-31r, the Tribe’s Motion to Strike, and PSE’s response, we agree that Exhibit RJR-31r contains declarations from three other witnesses aside from Dr. Libicki, which should not be included in the record. The Commission “rarely, if ever” admits an affidavit as an attachment to expert testimony without an opportunity for cross-examination.³ The three declarants were not included in the original Exhibit RJR-31, and PSE is amenable to filing a revised exhibit without these portions of the addendum. We agree with the Tribe’s in-the-alternative request that PSE should be required to refile a revised Exhibit RJR-31r that does not include the declarations from three other witnesses. This revised Exhibit RJR-31r shall only include the initial 169 pages of narrative questions and answers and Attachment A, Dr. Libicki’s curriculum vitae. PSE should file this revised Exhibit RJR-31r within seven days of the entry of this Order.

10 We also agree that the Puyallup Tribe should be allowed to submit the entirety of Dr. Libicki’s cross-examination testimony before the PCHB, which the Tribe has provided in Exhibit RJR-38X filed on October 17, 2022. WAC 480-07-830(2) provides that the Commission may reopen the record in a proceeding on its own motion. The Commission will give the other parties an opportunity to respond to the evidence the moving party seeks to add to the record, unless the Commission determines that it can rule on the motion without hearing from the other parties consistent with the requirements of due process.⁴ In this case, we reopen the record for the limited purpose of admitting the Tribe’s Exhibit RJR-38X. PSE has indicated its support for the Tribe submitting an exhibit containing Dr. Libicki’s full cross-examination testimony. Given

¹ Fuller, TR 261:20-263:2.

² Judge Howard, TR 264:19-265:8.

³ *WUTC v. CenturyLink Communications, LLC*, Docket UT-181051, Order 06 at ¶ 20 (July 25, 2022).

⁴ WAC 480-07-830(4).

the circumstances and the lack of objection from PSE, this exhibit is deemed admitted without the need for further process.

ORDER

11 THE COMMISSION ORDERS That:

12 (1) The Puyallup Tribe of Indian's Motion to Strike is GRANTED in Part and
DENIED in Part, subject to the conditions discussed in paragraphs 9 and 10 of
this Order.

13 (2) The record in this proceeding is reopened for the limited purpose of admitting the
Puyallup Tribe of Indian's proposed cross-exhibit RJR-38X.

DATED at Lacey, Washington, and effective November 7, 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.**