

**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*)

PUBLIC COUNSEL'S RESPONSE  
TO FOURTH AND FIFTH NOTICES  
OF POTENTIAL EX PARTE  
COMMUNICATION

1. The Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) responds to the fourth and fifth notices of potential ex parte communication. The Washington Utilities and Transportation Commission (Commission) provided opportunities to respond to the notice on November 17 and 25, 2022. Public Counsel's response to both are identical, so we are filing one response to both notices.
2. The notices address communications from Cindy Kisska, a member of the public who has participated in the public comment process. The record in Puget Sound Energy's rate case closed at the close of the hearing held on October 3, 2022, with the exception of the public comment exhibit, Exhibit BR-3, which was due to the Commission and filed by Public Counsel on October 17, 2022. Kisska subsequently provided two additional comments to the Commission related to Puget Sound Energy's pending rate case.

3. An ex parte communication is “[a] communication between counsel and the court when opposing counsel is not present.”<sup>1</sup> An ex parte communication involves a party. The communication is “done or made at the instance and for the benefit of one party only” without notice to any other party, or relates to court action taken by one party without notice to another.<sup>2</sup> The definition of “ex parte” assumes that “a cause of action exists in which the party is a participant.”<sup>3</sup>

4. While Kisska is a participant in the public comment process, she is not a “party” to the pending rate case. WAC 480-07-498 states that the Commission will receive as a bench exhibit comments “submitted by nonparties in connection with an adjudicative proceeding.” Under the Commission’s rules, any person may petition to intervene, and the Commission will grant party status to any person with a substantial interest in the proceeding or whose participation is in the public interest.<sup>4</sup> Kisska did not seek intervention and was not a party to the adjudication. As such, Kisska’s participation is appropriate and within the scope of public comment. Kisska’s communication is not an ex parte communication. Rather, the communications subject to the Commission’s fourth and fifth notices are late-filed public comments.

5. Parties have rights and obligations with respect to the adjudication, including service on all parties, compliance with the procedural schedule, and opportunity to file testimony, exhibits, and legal argument. Parties have the right to respond to one another to ensure that the Commission has the best record available on which to make its decisions. Nonparties have the

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<sup>1</sup> *State v. Watson*, 155 Wn.2d 574, 579, 122 P.3d 903 (2005) (citing *Black's Law Dictionary* 296 (Bryan Garner ed., 8th ed. 2004)).

<sup>2</sup> *Watson*, 155 Wn.2d at 579.

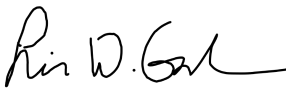
<sup>3</sup> *Id.*

<sup>4</sup> WAC 480-07-355.

opportunity to share their thoughts about proceedings with the Commission through public comments, which become part of an illustrative exhibit expressing public sentiment.<sup>5</sup> The Commission has discretion to either accept or reject late-filed public comments. If the Commission accepts the late-filed public comments from Kisska, they should be placed into a separate bench exhibit.

DATED this 17th day of November, 2022.

ROBERT W. FERGUSON  
Attorney General

/s/ 

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<sup>5</sup> WAC 480-07-498(1).  
PUBLIC COUNSEL'S RESPONSE TO  
FOURTH AND FIFTH NOTICES OF  
POTENTIAL EX PARTE  
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