

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

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**

**Docket UE-220066/UG-220067 and
UG-210918 (*consolidated*)**

**PUGET SOUND ENERGY'S MOTION
FOR PERMISSION TO REPLY TO
THE PUYALLUP TRIBE OF INDIANS
RESPONSE TO THE MOTION TO
STRIKE**

- I. Pursuant to WAC 480-07-370(5)(b) and WAC 480-07-375, Puget Sound Energy ("PSE") hereby requests that the Commission grant it leave to file a reply to the Puyallup Tribe of Indians' (the "Tribe") Response to PSE's Motion to Strike (the "Response"). The Tribe's Response requires a reply from PSE because it brings up new arguments and incorrect assertions of fact requiring a reply. PSE submits its proposed reply with this motion.

BACKGROUND

2. On October 31, 2022, in Docket UG-220067 et al., the Tribe submitted its post-hearing brief (“Brief”). In the Brief, the Tribe requested the Commission take notice and included for consideration two appendices: 1) a press release from Governor Inslee quoting portions of a speech, where the Governor flipped his political stance on the Tacoma LNG Project (the “Press Release”); and 2) an *amicus* brief from the Washington State Attorney General, arguing, that the Puget Sound Clean Air Agency should have calculated greenhouse gas emissions differently (the “*Amicus* Brief”).¹ These appendices were not in the record and the facts were raised for the first time in the final brief. Rather than attempting to include the appendices as exhibits prior to submitting the post-hearing brief and before the record closed, the Tribe alleged in its Brief, that the Commission could take notice of “available government records” pursuant to ER 201.² The Tribe claimed no other basis for inclusion other than ER 201.
3. On November 7, 2022, PSE filed a motion to strike (“Motion to Strike”), citing the Commission’s rule for taking notice, and alleging among other claims, the documents proffered by the Tribe are not the type of documents that notice may be taken, and the Tribe’s inclusion of the documents after the record has closed is procedurally improper.
4. On November 14, 2022, the Tribe filed its Response to the Motion to Strike. In its Response, the Tribe changed its position, asserting the Press Release is a policy statement under WAC 480-07-495.³ The Tribe also now claims PSE “opened the door” for including the *Amicus* Brief because PSE witness Ron Roberts stated “every environmental agency that’s been involved

¹ Tribe’s Brief at 3:9-19, Appendices A-B.

² Tribe’s Brief at 3 n. 1.

³ Tribe’s Response at 4.

in the permitting has recognized that this facility has environmental benefits.”⁴ The Tribe then claims the *Amicus* Brief counters an assertion that PSE claimed there was “uniform government support for the project” due to environmental benefits.⁵ PSE did not make this claim.

5. None of these claims or justifications were provided in the Tribe’s Brief, therefore PSE should be permitted to respond to these unsubstantiated claims and justifications for the inclusion of the appendices.

ARGUMENT

6. The Commission may grant leave to a party wishing to respond to a non-dispositive motion if good cause is stated, particularly if new material is raised, or new facts and legal arguments are asserted.⁶

7. The Tribe’s Response alleges new bases and legal arguments, not made in its Brief, which asserted the Press Release and *Amicus* Brief should be judicially noted under ER 201.⁷ In the Response, the Tribe now claims the appendices and accompanying assertions should be judicially noticed because the Press Release is a “policy statement” under WAC 480-07-495, and the *Amicus* Brief is necessary to demonstrate the attorney general opposes the project “because of its environmental impacts.”⁸ The Tribe further claims PSE “opened the door” to include the appendices because PSE asserted the Tacoma LNG project reduced greenhouse gases and environmental agencies recognized these environmental benefits at the hearing.⁹ These are new

⁴ Tribe’s Response at 6.

⁵ Tribe’s Response at 7.

⁶ *Bremerton-Kitsap Airporter, Inc., v. Shuttle Express, Inc.*, Docket TC-110230, Order 02 (Sept. 27, 2011) (authorizing reply for non-dispositive motion because good cause was stated when movant stated new material was raised in response); *see also* WAC 480-07-370(5)(b).

⁷ Tribe’s Brief at 3:9-19, Appendices A-B.

⁸ Tribe’s Response at 4-7.

⁹ Tribe’s Response at 6.

arguments or alleged statements of fact not previously asserted in the Brief, and PSE did not have the opportunity to address these assertions in the Motion to Strike.

8. In the Brief, the Tribe asserted “Governor Inslee and the Attorney General have publicly stated that they do not support Tacoma LNG[,]”¹⁰ and attached the appendices as evidence. The justification in the Brief for including the appendices and assertions was that ER 201 authorizes the Commission to take judicial notice of publicly available government records.¹¹ Accordingly, PSE filed its Motion to Strike, arguing contrary to the Tribe’s assertion, the Commission rules do not allow the Commission to take judicial notice based on the assertions in the Tribe’s Brief.¹²

9. Now, the Tribe is asserting new rationales and arguments for why the Commission may take notice of the appendices. The Tribe incorrectly claims the Press Release is a “policy statement” and PSE “opened the door” to including the *Amicus* Brief.¹³ PSE’s proposed reply, attached as Attachment A to this motion, responds to these claims and demonstrates the language in the WAC does not support the Tribe’s claims. Furthermore, PSE’s proposed reply shows PSE did not “open the door” and the Tribe still did not follow the proper procedural rules for the Commission to take notice.

10. Accordingly, there is good cause to allow PSE to file a reply and respond to the new assertions and claims in the Tribe’s Response.

¹⁰ Tribe’s Brief at 3:9-19, Appendices A-B.


¹¹ *Id.*

¹² PSE’s Motion to Strike at 3-11.

¹³ Tribe’s Response at 4-7.

RESPECTFULLY SUBMITTED this 21st day of November, 2022.

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