

**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
RESPONSE TO NOTICE OF EX
PARTE COMMUNICATION**

- I.* Puget Sound Energy ("PSE") files this response to the Fifth Notice of Potential Ex Parte Communication issued by the Commission on November 15, 2022 (the "Notice"). The Notice detailed ex parte communication from PSE customer Cindy Kisska sent directly to the Commissioners on November 9, 2022. Ms. Kisska also submitted comments to the Commissioners previously, on October 28, 2022, which was presented to the parties by the presiding officer in the Fourth Notice of Potential Ex Parte Communication. Ms. Kisska

submitted these comments directly to the presiding officer and the Commissioners, without those comments being visible to the public or the parties to the captioned proceedings. The allegations in the communications themselves are not based in fact and PSE denies the claims asserted as demonstrated by the robust record in this proceeding.

2. On November 17, 2022, Public Counsel submitted a response to the Fourth Notice of Potential Ex Parte Communication alleging the communications do not constitute ex parte communications.¹ The basis for Public Counsel’s claim is that because Ms. Kisska is not a party to the proceeding, the communications sent to the Commissioners are not ex parte communications and they are public comments. To support this claim, rather than citing the WAC or Administrative Procedure Act provision addressing ex parte communication, Public Counsel cites *State v. Watson*, 155 Wn.2d 574, a Washington Supreme Court decision concerning a criminal law conviction with very different facts.² *Watson* is inapplicable to administrative law and does not supersede or apply its interpretation to the Administrative Procedure Act (RCW 34.05.455), the corresponding WAC (WAC 480-07-310), or the facts presented to the Commission in this case.

3. PSE is concerned with Public Counsel’s characterization of the communications identified in the Fourth and Fifth Notices. Public Counsel incorrectly claims ex parte

¹ Dockets UE-220066, UG-220067, and UG-210918 (Consolidated), Public Counsel’s Response to Fourth and Fifth Notices of Potential Ex Parte Communication, ¶¶ 3-5 (Nov. 17, 2022).

² *State v. Watson*, 155 Wn.2d 574, 579 (2005) (concluding a general policy memorandum on sentencing that had been distributed to superior court judges and was attached to a sentencing memorandum in a criminal case was not ex parte communication as the memorandum was not directed specifically to the case at issue).

communications can only consist of communications to the Commissioners by parties to the proceeding.³ This is not supported by the WAC and administrative law.

4. WAC 480-07-310 governs ex parte communication in proceedings before the Commission. The WAC states that once an adjudicative proceeding begins, “no person who has a direct or indirect interest in the outcome of the proceeding,” may “directly or indirectly communicate about the merits of the proceeding with the commissioners” and other decisionmakers unless reasonable notice is provided to all parties to allow a response.⁴ When referring to the types of communications, the WAC intentionally uses the word “persons” rather than “parties” indicating the intent is for the ex parte prohibition to apply to parties and nonparties. Further, the WAC is broad in that it applies to any person with a “direct or indirect interest” in the outcome. This broad application protects the integrity of the proceeding and allows parties the opportunity to be made aware of and respond to any attempts to persuade or lobby Commissioners or other decisionmakers.

5. RCW 34.05.455(2), which also governs ex parte communications applicable to proceedings before the Commission, prohibits the presiding officer from communicating “directly or indirectly,” about any issue in the proceeding with “any person not employed by the agency who has a direct or indirect interest in the outcome” unless all parties have an opportunity to respond.⁵ If the presiding officer receives an ex parte communication, they are required to

³ Dockets UE-220066, UG-220067, and UG-210918 (Consolidated), Public Counsel’s Response to Fourth and Fifth Notices of Potential Ex Parte Communication, ¶ 4 (Nov. 17, 2022).

⁴ WAC 480-07-310(1).

⁵ RCW 34.05.455(2).


place the communications received on the record and any party desiring to rebut the communication may do so within ten days.⁶

6. Here, Ms. Kisska is a person with at least an indirect interest in the outcome as a PSE customer. While the comments would be more appropriately provided as part of the public comment period, Ms. Kisska refused to limit herself to that process and in addition to her public comments, she directly emailed the Commissioners. The ALJ is correct to label the emails as an ex parte communication and allow parties the opportunity to respond as is their right under the Administrative Procedure Act and the applicable WAC.

7. Public Counsel's characterization would allow non-parties who have a direct or indirect interest, to submit comments, thoughts, or otherwise lobby the Commissioners without providing parties to the relevant proceeding their automatic right to respond. This would be a dangerous precedent. While Ms. Kisska's comments are obviously baseless, they should still be considered improper ex parte communications triggering the procedures in WAC 480-07-310 and RCW 34.05.455.

RESPECTFULLY SUBMITTED this 28th day of November, 2022.

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⁶ RCW 34.05.455(5).