

**BEFORE THE**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**PUGET SOUND ENERGY,**

**Respondent.**

**Docket UE-240004  
Docket UG-240005  
(consolidated)**

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**In the Matter of the Petition of**

**PUGET SOUND ENERGY**

**For an Accounting Order Authorizing  
deferred accounting treatment of  
purchased power agreement expenses  
pursuant to RCW 80.28.410**

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**Docket UE-230810  
(consolidated)**

**PUGET SOUND ENERGY’S MOTION  
TO STRIKE PORTIONS OF JEA’S AND  
STAFF’S POST-HEARING BRIEFS**

**I. INTRODUCTION AND RELIEF REQUESTED**

1. Pursuant to WAC 480-07-375, Puget Sound Energy ("PSE") hereby submits this motion to strike portions of the briefs submitted by Joint Environmental Advocates ("JEA") and Commission Staff ("Staff"). JEA submitted a post-hearing brief on December 4, 2024 ("JEA's Brief"). Staff also submitted a post-hearing brief on December 4, 2024 ("Staff's Brief"). As discussed in more detail below, PSE requests the Commission strike the portions of these briefs that seek to introduce new evidence into the record after the evidentiary record has closed or seek

to incorporate by reference evidence from other dockets that is not in the evidentiary record in this case. Specifically, PSE requests the Commission strike the following:

- JEA Brief: the last sentence in paragraph 18, along with footnote 38, that improperly cites to evidence in another docket that is not consolidated with this proceeding;
- JEA Brief: the final sentence in paragraph 64, along with footnotes 150 and 151, that improperly cite to evidence of other utilities' websites, which is not in the record;
- Staff Brief: the third sentence in paragraph 47, along with footnote 121, that improperly cites to evidence in a docket that is not consolidated with this proceeding; and
- Staff Brief: portions of paragraph 135, along with footnotes 330 and footnote 331, that improperly cite to evidence in other dockets that are not consolidated with this proceeding.

## **II. BACKGROUND**

2. The current case involves Dockets UE-240004, UG-240005, and UE-230810, consolidated (the "MYRP Dockets"). PSE, Staff, JEA, and other parties have submitted extensive testimony, response testimony, and cross-answering testimony, as well as numerous exhibits into the record and cross-examination at the evidentiary hearing. It is PSE's understanding that the evidentiary record in the MYRP Dockets closed on November 22, 2024, the day responses to Bench Requests Nos. 1-4 were filed with the Commission.<sup>1</sup>

3. On June 11, 2024, the Commission denied a motion to consolidate the MYRP Dockets with Docket UG-230968, in which PSE filed proposed revisions to its Tariff WN U-2 rates under natural gas tariff Schedule 111.<sup>2</sup> JEA objected to consolidation of Docket UG-230968 with the

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<sup>1</sup> See *WUTC v. PSE*, Docket Nos. UE-240004 *et al.*, PSE's Response to Bench Request No. 002 (Nov. 22, 2024).

<sup>2</sup> *WUTC v. Puget Sound Energy*, Dockets UE-240004 *et al.*, Order 08/06/04 (June 11, 2024).

MYRP Dockets on the basis that “the two proceedings are not sufficiently related to warrant consolidation[.]”<sup>3</sup> The Commission agreed and declined to consolidate the dockets.<sup>4</sup>

4. Despite the Commission’s denial of the consolidation of Docket UG-230968 with the MYRP Dockets, both Staff and JEA make reference to testimony and exhibits filed in Docket UG-230968 in their post-hearing briefs.<sup>5</sup> Further, Staff makes arguments based on its comment filing in Docket UG-220242, which is also not a part of the present case.<sup>6</sup> Finally, JEA includes references to other utilities’ websites that are not included in the evidence in this case.<sup>7</sup> As discussed in more detail below, all of these should be stricken.

### III. ARGUMENT

5. Supplemental information submitted in connection with a post-hearing brief is disfavored when a party improperly presents the information outside the procedural schedule and uses post-hearing briefs to supplement the record.<sup>8</sup> Furthermore, any evidentiary claims submitted after a hearing record has closed will not be considered by the Commission.<sup>9</sup> There is wide discretion to strike briefings that use the brief as an opportunity to provide additional testimony, where parties cannot review the material or otherwise examine the assumptions.<sup>10</sup> Parties are

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<sup>3</sup> *Id.* ¶ 9.

<sup>4</sup> *Id.*

<sup>5</sup> JEA’s Brief ¶ 18; Staff’s Brief ¶ 135.

<sup>6</sup> Staff’s Brief ¶¶ 47, 135.

<sup>7</sup> JEA’s Brief ¶ 64.

<sup>8</sup> *In re Application E-18527 of United Parcel Service, Inc., for extension of authority under Common Carrier Permit No. 16295* Docket No. E-18527, Order M. V. No. 128995 (Jan. 6, 1984) (granting motion to strike a statistical compilation and analysis appended to post-hearing briefs as improperly presented after the close of the record, irrelevant, and because it was not subject to verification or cross-examination).

<sup>9</sup> *In Re Gte Nw., Inc.*, Docket No. U-89-3031-P, Second Supplemental Order (July 23, 1990) (striking a footnote and attachment related to bond yields changes filed after the hearing included in a post-hearing brief because “material submitted after a hearing record has closed will not be considered.”).

<sup>10</sup> *WUTC v. Clarkston Gen. Water Supply, Inc.*, Docket No. U-84-46, (Apr. 14, 1985) (Striking update provided by the company as late filed exhibits); *Worldcom fka MFS Intelenet of Washington, Inc. v. GTE Northwest*

prohibited from asserting new claims in the final brief based on information not in evidence because opposing parties need a “meaningful opportunity” to rebut or address those claims.<sup>11</sup>

6. Here, both JEA and Staff have submitted new evidence in their post-hearing briefs that is not included in the underlying evidentiary record in the MYRP Dockets. This precludes PSE from having a meaningful opportunity to address their claims and respond to the new evidence in this case. These references should be stricken from the record.

**A. All references to evidence in other dockets not included in the evidentiary record should be stricken as not based on evidence in the record.**

7. Both Staff and JEA reference evidence submitted in outside dockets that is not a part of the evidentiary record in the MYRP Dockets. Both Staff and JEA reference evidence in Docket UG-230968, and Staff references evidence in Docket UG-220242, that has not been admitted into evidence in this case. The Commission explicitly denied a motion to consolidate the MYRP Dockets with Docket UG-230968. Thus, the Commission should strike references to evidence submitted in connection with Docket UG-230968, as it is outside of the evidentiary record.
8. In JEA’s Brief, paragraph 18, footnote 38, JEA points broadly to Docket UG-230968 to support its contention that PSE’s current compliance plan rests on an incorrect reading of the CCA.<sup>12</sup> JEA claims that the “closely-related CCA docket contains an in-depth discussion of

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*Incorporated*, Docket No. UT-980338, 3rd Suppl. Order (May 12, 1999) (striking report in reply brief as testimony, because the parties had no opportunity to review the material, consider or examine its assumptions, or otherwise had any meaningful opportunity to address it.); *Re Gte Nw., Inc.*, Docket No. U-89-3031-P, Second Supplemental Order (July 23, 1990).

<sup>11</sup> *Worldcom fka MFS Intelenet of Washington, Inc. v. GTE Northwest Incorporated*, Docket No. UT-980338, 3rd Suppl. Order (May 12, 1999) (striking report in reply brief as testimony, because the parties had no opportunity to review the material, consider or examine its assumptions, or otherwise had any meaningful opportunity to address it.).

<sup>12</sup> JEA’s Brief ¶ 18.

additional reasons” why PSE’s reading of the CCA is incorrect.<sup>13</sup> Those “in-depth discussion[s] of additional reasons” are outside the evidentiary record in this case. JEA seeks to incorporate by reference a broad swath of evidence and testimony that has not been submitted for review or cross-examination in the MYRP Dockets. This is an attempt to incorporate outside evidence and information after the evidentiary record has closed. Therefore, PSE requests that the Commission strike the final sentence of paragraph 18 and footnote 38.

9. Staff’s Brief at paragraph 47, third sentence and footnote 121, references Staff’s Comments Regarding PSE’s 2023 Natural Gas Integrated Resource Plan submitted in Docket UG-220242.<sup>14</sup> These comments were made in a separate docket and are not in the record in the MYRP Dockets. PSE respectfully requests that the Commission strike the third sentence in paragraph 47 and footnote 121.
10. Further, Staff’s Brief at paragraph 135 makes two references to outside dockets that do not appear in the current record. At paragraph 135, footnote 330, Staff refers to testimony filed in Docket UG-230968 to characterize PSE’s overall arguments in Docket UG-230968 as it relates to the CCA.<sup>15</sup> This referenced testimony was not admitted in the evidentiary record for the MYRP Dockets. PSE has not been given a chance to respond or cross-examine the evidence or characterization made of this evidence in the current case.
11. Finally, Staff’s Brief at paragraph 135, footnote 331, references the Staff Comments filed in Docket UG-220242 to support its contention that Staff’s position on CCA requirements has

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<sup>13</sup> *Id.*

<sup>14</sup> Staff’s Brief ¶ 41.

<sup>15</sup> Staff’s Brief ¶ 135.

remained consistent over time.<sup>16</sup> This evidence is not incorporated anywhere in the evidentiary record in the MYRP Dockets, and PSE has not been given a meaningful opportunity to respond to its content in the current case.

12. Therefore, PSE respectfully requests that the Commission strike the portions of paragraph 135, including footnotes 330 and 331, as shown below:

The other law PSE cites is the CCA. As noted above, PSE witness Allis states that “there will eventually have to be significant reductions in gas usage in order to meet [CCA] targets.”<sup>329</sup> The implication being that PSE will need to retire gas plant earlier than currently estimated due to reduced demand. ~~However, while witness Allis takes this position, PSE as a whole has been far from clear about whether or not the Company believes it will need to reduce its emissions from natural gas service as a result of the CCA. In Docket UG-230968, PSE argued that it was not legally required to reduce emissions because of the CCA and that therefore the Joint Environmental Advocate’s RSM proposal which aimed to incent actual decarbonization, was inappropriate.<sup>330</sup> In this case however, PSE argues that accelerated depreciation is warranted because the CCA *will* lead to reduced demand. But PSE cannot have it both ways, either the CCA does, as a practical matter, require decarbonization of natural gas service, or it does not. Staff’s position on this issue has been consistent[.]<sup>331</sup>~~

**B. JEA’s references to other utilities websites should be stricken as not based on evidence in the record.**

13. JEA’s Brief refers to two websites from other utilities as evidence to support its position on how PSE should use its website. Neither of these websites were referenced in JEA’s initial response testimony, their cross-answering testimony, or at the evidentiary hearing. They are not

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<sup>16</sup> Staff’s Brief ¶ 135.

in evidence in this case. JEA should not now be allowed to supplement the evidentiary record with unnecessary additional evidence.

14. JEA's Brief at paragraph 64, footnote 150, refers to the Southern California Edison webpage for pilots related to "Electric Vehicles for Businesses," while footnote 151 refers to the Ameren Illinois "Programs & Incentives" webpage for pilots related to "Electric Vehicles."<sup>17</sup> JEA uses these references to argue that "PSE could list all pilots related to a specific topic on a single webpage for that topic."<sup>18</sup> JEA did not submit these examples of external websites for review or cross-examination prior to the post-hearing brief. Though their arguments as to how PSE's website could be improved have been heard, there is no reason, and it is inconsistent with Commission precedent, to allow external evidence at this point when the parties have had no chance to review or respond to that evidence. PSE respectfully requests that the Commission strike footnotes 150 and 151, as well as the clause of the sentence in paragraph 64 of JEA's Brief in which they appear.

#### IV. CONCLUSION

15. Both Staff and JEA have made assertions that are not supported in the record and incorporated evidence that is not included in the current evidentiary record. PSE requests that the Commission strike the following sections from JEA's Brief: the last sentence in paragraph 18, along with footnote 38; and the final sentence in paragraph 64, along with footnotes 150 and 151. Further, PSE requests that the Commission strike the following sections from Staff's Brief:

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<sup>17</sup> JEA's Brief ¶ 64.

<sup>18</sup> *Id.*

the third sentence in paragraph 47 and footnote 121; and portions of paragraph 135 as marked above, along with footnotes 330 and footnote 331.

RESPECTFULLY SUBMITTED this 11th day of December, 2024.

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