BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, Respondent.	DOCKETS UE-240004 and UG-240005 (Consolidated) **JOINT ENVIRONMENTAL ADVOCATES' RESPONSE TO PUGET SOUND ENERGY'S MOTION TO STRIKE PORTIONS OF JEA'S POST-HEARING BRIEF**

INTRODUCTION

1. During an extensive hearing, Puget Sound Energy ("PSE") did not cross-examine a single one of the Joint Environmental Advocates' ("JEA's") witnesses or object to a single exhibit. Indeed, it did not cross-examine *any* party's witnesses. But now it seeks to flyspeck JEA's post-hearing brief, seeking to strike one sentence and two footnotes in a 46-page brief, on the ground that it lacked the opportunity to "review the material or otherwise examine" the material contained therein. PSE does not explain how JEA's passing reference to this information prejudices it, nor could it. The motion to strike should be denied because the passing references are not "evidence" with which JEA is seeking to supplement the record.

LEGAL STANDARD

2. PSE is correct that the Commission should not consider *evidence* that is untimely presented.[1] That said, the Commission has recognized that "[s]triking a party's filing is a severe

[1] PSE Motion, at 3.

sanction that the Commission does not impose lightly, particularly when that filing assists the Commission in resolving disputed issues presented to it."[2] The Commission will not strike post-hearing briefs where a party refines their position and presents alternatives, so long as the party did not seek to intentionally prejudice other parties.[3]

3. Recommendations or proposals by parties do not constitute "evidence" that are properly the subject of a motion to strike.[4] Rather, proposals are positions that parties arrive at with the benefit of a developed record.[5] The extent to which a proposal in a brief is based in the record goes to the persuasiveness of the argument and not its propriety.[6]

ARGUMENT

4. PSE misunderstands the purpose of a motion to strike. While it would be inappropriate for JEA to seek to introduce new evidence—e.g., testimony, studies, or data—in a post-hearing brier, that is not what it did. Instead, JEA's final brief made passing reference to another docket and two public websites of other utilities as part of its recommendations to the

[2] *WUTC. v. Puget Sound Energy*, Order 15, ¶ 16 Dockets UE-220066/UG-220067 (May 23, 2022).

[3] *WUTC. v. Puget Sound Energy,* Order 13, ¶ 24. Dockets UE-072300/UG-072301 (Jan. 15, 2009).

[4] *See In the Matter of the Pricing Proceeding for Interconnection, Unbundled Element, Transport and Termination, and Resale*, Order 23, ¶ 8, Dockets UT-960369/UT-960370/UT-960371 (Apr. 10, 2000).

[5] *Id.* ¶¶ 8, 10.

[6] *See WUTC. v. Puget Sound Energy,* Order 13, ¶ 24, Dockets UE-072300/UG-072301 (Jan. 15, 2009).

Commission offered at the conclusion of the hearing process. These references are not evidence that are a proper subject of a motion to strike.

5. PSE first asks that the Commission strike a sentence referring to another docket, concerning tariffs under the Climate Commitment Act ("CCA"). That docket involves most of the same parties as this one, and concerns closely related issues. The offending sentence in its entirety reads as follows:

> *The closely-related CCA tariff docket contains an in-depth discussion of additional reasons why PSE's do-nothing compliance plan rests on an incorrect reading of the CCA.*

JEA Post-Hearing Brief at ¶ 18. The sentence includes a footnote referring to Wash. UTC, Proceeding No. UG-230968 (2024), which recently concluded.

6. The sentence comes in the middle of an extended discussion of how PSE's strategy for compliance with the CCA—which PSE believes does not require it to take any steps to decarbonize—is inconsistent with its legal duties and should be rejected. All of this discussion is supported to citations to the evidentiary record in this matter.

7. It is difficult to fathom why a passing reference to a closely related docket would trigger a motion to strike. JEA, PSE, Staff, and Public Counsel are all parties to that proceeding. PSE does not cite to any example where such a drastic remedy was imposed in similar circumstances. Nor does it explain what possible prejudice could arise from acknowledging the existence of a related docket. JEA did not seek to formally incorporate by reference all of the evidence in the other docket; it merely referred to the existence of a contemporaneous docket with closely related issues.

8. PSE's argument that it lacked a "meaningful opportunity" to test the evidence in that docket, Motion at 4, is particularly puzzling, as it is a party to that docket too and had a more than meaningful opportunity to test the evidence and make its arguments.

9. The Commission's governing regulations authorize it to take official notice of "technical or scientific facts within the commission's specialized knowledge" as well as "rulings and orders" of the Commission. WAC 480-07-495(2). So does the state Administrative Procedure Act. RCW 34.05.452(5). Federal and state courts take judicial notice of their own dockets. *See, e.g., EduMoz, LLC v. Republic of Mozambique*, 968 F.Supp.2d 1041, 1049 (C.D. Cal. 2013) ("The court can take judicial notice of its own docket."); *DeLong v. Parmelee*, 157 Wn. App. 119, 166 (2010) ("trial court may take judicial notice of the record in proceedings 'engrafted, ancillary, or supplementary' to the cause before it). In short, the Commission can take notice of the arguments and evidence in the closely related CCA tariff docket and consider its forthcoming Order in that docket. PSE is not prejudiced by this and the motion to strike should be denied.

10. PSE's other complaint is that JEA's final brief cited to two illustrative examples of utility company websites. JEA was recommending that PSE place information about different "pilot" programs on a single webpage, noting that this would better "allows customers to learn about what their utility is doing and how they may be able to participate without already having to know that a pilot exists to learn more about it." JEA Post-Hearing Brief, at ¶ 64. It referenced two utilities who do this already, and cited to their websites.

11. JEA's recommendations that PSE consider such a "modest" improvement in its public communications, *id*., are not "evidence" that is the appropriate subject of a motion to strike.[7] They are merely JEA's recommendations at the conclusion of a contested hearing. It is not JEA's position that the content of these websites is imported into the evidentiary record before the Board for decisionmaking by virtue of citing them in the post-hearing brief. Given that PSE has acknowledged that it has "heard" PSE's recommendation, and that it has not explained any prejudice that would arise from citation to public websites, its reason for a motion to strike is difficult to understand. It is certainly not a good use of the Commission's or the parties' time.

CONCLUSION

12. For the foregoing reasons the motion to strike should be denied.

Dated this 17th day of December, 2024.

Respectfully submitted,

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[7] *See In the Matter of the Pricing Proceeding for Interconnection, Unbundled Element, Transport and Termination, and Resale*, Order 23, ¶ 8, Dockets UT-960369/UT-960370/UT-960371 (Apr. 10, 2000) ("The Commission agrees that the proposal is not evidence. It is based upon evidence of record and constitutes the CLECs' position in light of the record.").

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