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VIA ELECTRONIC FILING

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities & Transportation Commission
133 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: **Docket No. A-072162: Rulemaking to Consider Possible Corrections and Changes to Selected Rules in WAC 480-07. Relating to Procedural Rules**

Dear Ms. Washburn:

Puget Sound Energy, Inc. ("PSE" or "the Company") submits the following comments relating to the Rulemaking to Consider Possible Corrections and Changes to Selected Rules in WAC 480-07 Relating to Procedural Rules. In general, PSE agrees with the Commission's proposed revisions to the rules. Additionally, PSE believes that the revisions proposed by Public Counsel are not necessary, for the reasons discussed at the Bench-Bar Conference earlier this month. In this comment letter, PSE provides its concerns about the proposed change to WAC 480-07-510(3)(b), and PSE provides a proposed revision to WAC 480-07-405.

WAC 480-07-510(3)(b): PSE disagrees with Public Counsel's proposed broad language prohibiting "locked, password protected or hidden cells" in workpapers. The portion of the rule as proposed, reads as follows:

> Electronic files that support the exhibits and workpapers must be <u>provided</u> using logical file paths, as necessary, by witness, and using identifying file names <u>and may not include locked, password protected, or hidden cells.</u>

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This proposed language fails to take into consideration several valid reasons for including locked, password protected and hidden cells in electronic documents. First, workpapers and electronic documents may be protected so that only the responsible analyst can change the cells. In such a case, the cell could be password protected and the password could be provided by the Company. Second, proprietary models the Company uses from outside vendors may have elements of the model that are protected to secure the integrity of the model or to protect proprietary calculations. In such a case, the password would not be provided. Third, hidden cells, columns and rows are used periodically in order to make spreadsheets more readable, less confusing, and easier to use. They are very easily identified and unhidden.

In light of the above, we recommend the following language:

> Electronic files that support the exhibits and work papers must be provided using logical file paths as necessary, by witness, and using identifying file names. If cells are password protected, a password must be provided, unless the password protected cell secures the integrity of a proprietary model or proprietary calculations. If cells are locked and password protected, the password must similarly be provided.

PSE proposes that this language also be adopted for WAC 480-070-140(b).

WAC 480-07-405

The Company is concerned about the use of excessive data requests. For example, in a recent general rate case, one party served the Company with 336 data requests in an 18 day period— including serving 106 data requests on one day and 147 data requests on another day. If subparts to questions are included in the count, the number of data requests was much higher. Given the lengthy time period between the filing of the direct case and the date when response testimony is due, there does not seem to be a need to serve them over such a short time or in such large groupings.

To respond to this volume of data requests in a short period of time is expensive for the Company and its customers. Additionally, many of the data requests sought information that had been provided in the initial filing (testimony, exhibits or workpapers) or asked questions that do not apply to PSE (assuming the Company operates in multiple jurisdictions; state income tax issues, etc). The party apparently did not review the Company's filing before issuing the requests and failed to brief its consultants on even the basic aspects of PSE's regulated operations or review the consultants' requests before sending them out. Given this use of the discovery process, it seems reasonable to apply some outside boundaries to the numbers of data requests.

The trend in civil litigation is to limit the use of interrogatories. For example, in Federal Court, parties are limited to 25 interrogatories (including subparts), and must secure leave of court to serve a larger number. *See* Fed. R. Civ. Pro. Rule 33(a). The Advisory Committee Notes to Rule 33 of the Federal Rules of Civil Procedure (1993 Amendments) explain the reason for this limitation:

> Experience in over half of the district courts has confirmed that limitations on the number of interrogatories are useful and manageable. Moreover, because the device can be costly and may be used as a means of harassment, it is desirable to subject its use to the control of the court . . . .

In light of the foregoing, the Company recommends the following revisions to WAC 480-07-405

480-07-405

(1)   Grouping and numbering

    (a)   **Grouping.** Parties must group their data requests <u>in groupings of not more than 25 requests, including subparts. A data request subpart is a request that does not need to be part of a broader request, but can stand alone. A subpart does not need to be identified with a separate heading or identifier (such as a, b, etc) in order to be a subpart. The data requests must be grouped</u> by subject or witness and present data requests in an electronic format agreed upon by the parties whenever possible, unless the parties agree to a different procedure or the presiding officer orders a different procedure.
. . .

. . . .

(4)   **Limitation on numbers of data requests.** <u>Data request should not be used as a means of harassment and should be reasonable in number. Parties should not serve more than 25 data request, including subparts, in one grouping, and no more than 50 data requests, including subparts, in a seven day period without leave of the presiding officer.</u> The presiding officer may <u>further</u> limit the number of data requests that a party may submit and may require parties to certify that they have coordinated discovery with other parties of similar interest and that no substantial duplication exists with other parties' submissions.

PSE is willing to be flexible on the number of data requests included in groupings and served over a seven-day period, but given its recent experience, the Company believes that there should

be some reasonable outside limit on the number of data requests served, and that approval of the presiding officer should be obtained before exceeding the established number.

We appreciate the opportunity to provide comments on the procedural rules, and we thank you for your consideration of these important issues.

Very truly yours,

Sheree Strom Carson

cc: Tom DeBoer