

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of

PUGET SOUND ENERGY,
ALBERTA INVESTMENT
MANAGEMENT CORPORATION,
BRITISH COLUMBIA INVESTMENT
MANAGEMENT CORPORATION,
OMERS ADMINISTRATION
CORPORATION, and PGGM
VERMOGENSBEHEER B.V.

For an Order Authorizing Proposed
Sales of Indirect Interests in Puget
Sound Energy

DOCKET U-180680

ORDER 05

MODIFYING PROCEDURAL
SCHEDULE; LIMITING
DISCOVERY; NOTICE OF
HEARING

**(Set for Friday, February 15, 2019,
at 1 p.m.)**

BACKGROUND

- 1 On September 5, 2018, Puget Sound Energy (PSE or Company), jointly with Alberta Investment Management Corporation, British Columbia Investment Management Corporation, OMERS Administration Corporation, and PGGM Vermogensbeheer B.V. (collectively, Joint Applicants), filed with the Washington Utilities and Transportation Commission (Commission) an application for approval to sell a non-controlling interest in Puget Holdings LLC (PSE's Application).
- 2 On November 21, 2018, the Commission filed Order 03, Prehearing Conference Order; Notice of Hearing (Order 03), which established a procedural schedule including, among other things, a deadline for Commission staff (Staff), Public Counsel, and all intervenors to file testimony and exhibits on January 11, 2019, a deadline for the Joint Applicants' Rebuttal testimony and exhibits on February 5, 2019, and an evidentiary hearing on March 1, 2019.

3 On January 8, 2019, counsel for PSE filed a letter informing the Commission that the Joint Applicants, Commission staff (Staff), the Alliance of Western Energy Consumers (AWEC), The Energy Project, and NW Energy Coalition (NWECC) (collectively, the Settling Parties) had reached a multi-party settlement in principal. The letter also indicated that the Public Counsel Unit of the Washington State Attorney General’s Office (Public Counsel) may join the settlement. The Settling Parties requested that the Commission suspend the current procedural schedule and adopt the following proposed schedule.

Settling Parties’ Proposed Schedule

<u>Event</u>	<u>Date</u>
Settlement Agreement Filed	January 15, 2019
Supporting Testimony & Exhibits Filed	January 18, 2019
Public Counsel Supporting Testimony Filed ¹	January 22, 2019
Opposing Testimony & Exhibits Filed	February 1, 2019
Settlement Hearing	February 8, 2019

4 On January 9, 2019, the Washington and Northern Idaho District Council of Laborers (WNIDCL) filed a response to the Settling Parties, objecting to the proposed schedule. WNIDCL argues that it and its witnesses relied upon, and made plans according to, the March 1, 2019, evidentiary hearing date. Further, it argues that changing the hearing date from March 1, 2019, to February 8, 2019, would prejudice the non-settling parties if witnesses opposing the settlement are unavailable. WNIDCL noted that its counsel is not available on February 8, 2019, due to a previously scheduled oral argument, and argues that adopting the Settling Parties’ proposed schedule would not allow the non-settling parties a meaningful opportunity to present evidence and testimony in opposition to the settlement, contrary to the requirements of WAC 480-07-740. WNIDCL argues that the Settling Parties have failed to articulate any reason why the current schedule must be accelerated by three weeks. Lastly, WNIDCL requests that the Commission maintain the hearing date of March 1, 2019, for a settlement hearing.

5 On January 9, 2019, the International Brotherhood of Electrical Workers Local 77 (IBEW) and the United Association Local 32 of Journeymen and Apprentices of the

¹ Conditional upon Public Counsel joining the proposed settlement.

Plumbing and Pipefitting Industry of the U.S. and Canada (UA Local 32) (collectively, Labor Unions) filed a response to the Settling Parties, objecting to the proposed schedule. The Labor Unions argue that it and its witnesses relied upon, and made plans according to, the March 1, 2019, evidentiary hearing date, which was set on an already expedited schedule.

- 6 The Labor Unions also argue that the Settling Parties did not consult or consider the Labor Unions regarding the proposed schedule. Further, they argue that the Settling Parties failed to provide any explanation why the current schedule should be accelerated.
- 7 The Labor Unions argue that their rights to cross examine witnesses, present evidence in opposition to the settlement, present arguments, and furnish evidence will be prejudiced by the Settling Parties' proposed schedule in particular because of conflicts with the availability of witnesses and their attorney. Lastly, the Labor Unions assert that they have an important role in the case and that the proposed schedule would not afford meaningful labor participation or a sufficient opportunity to participate in the proceeding.
- 8 **STATUS CONFERENCE.** The Commission convened a status conference in this docket at Olympia, Washington on January 9, 2019, before Administrative Law Judges Rayne Pearson and Andrew J. O'Connell, to discuss the procedural issues raised by the Settling Parties' request to suspend and modify the procedural schedule and provide an opportunity to the non-settling parties to explain their positions regarding the proposed modifications to the procedural schedule. All parties or representatives chose to attend telephonically with the Commission's permission.
- 9 At the conference, Ms. Carson, representing PSE and at times speaking on behalf of the Settling Parties, explained that the Settling Parties had agreed to seek an earlier date for a settlement hearing than the date currently set for the evidentiary hearing. Ms. Carson also explained that the Joint Applicants believe that an earlier decision would be beneficial because it will inform other business considerations. Ms. Carson also stated that the settlement terms were agreed to more than two weeks ago, the non-settling parties have seen a version that very closely matches the current version, and that she would distribute the updated version to the non-settling parties by the next day.
- 10 Ms. Liotta, representing the Federal Executive Agencies (FEA), indicated that FEA would not oppose the settlement and does not oppose the Settling Parties' proposed schedule. Ms. Gafken, representing Public Counsel, indicated that Public Counsel takes no current position on whether it will join or oppose the settlement agreement.

- 11 Ms. Franco-Malone, representing WNIDCL, and Mr. Medlin, representing the Labor Unions, (collectively, the Non-Settling Parties) reiterated their arguments that the Settling Parties' proposed procedural schedule would result in prejudice to the Non-Settling Parties.
- 12 All parties or their representatives indicated that they were available for a settlement hearing on February 15, 2019.
- 13 The Non-Settling Parties conceded that a hearing date of February 15, 2019, would be less prejudicial. The Labor Unions indicated that February 15, 2019, is more feasible than February 8, 2019. NWIDCL also indicated that its attorney would be available on February 15, 2019, but the availability of its witnesses was not readily ascertainable. Regardless, the Non-Settling Parties argued that the date currently set for an evidentiary hearing, March 1, 2019, should be adopted by the Commission as the date for a settlement hearing.
- 14 WNIDCL and the Labor Unions requested that their testimony and exhibits in opposition to the settlement agreement be due one week prior to the hearing date if the Commission selected February 15, 2019, as a hearing date, consistent with the time period proposed by the Settling Parties.
- 15 The administrative law judge relieved the parties of their obligation to continue following the procedural schedule, including deadlines for filing testimony and exhibits, set out in the prehearing conference order.

DISCUSSION AND DECISION

- 16 We adopt the schedule proposed by the Settling Parties with two modifications: first, the Commission will hold a Settlement Hearing on February 15, 2019, at 1 p.m.; second, any parties opposing the settlement must file their testimony and exhibits in opposition to the settlement agreement by February 8, 2019.
- 17 The Settling Parties complied with Commission rule by requesting to suspend the procedural schedule and set a hearing date for the Commission to evaluate the settlement agreement.² Setting an earlier date to consider a settlement agreement is common practice at the Commission, particularly when, as here, parties have reached a settlement more than six weeks in advance of the evidentiary hearing. We disagree with WNIDCL and the

² WAC 480-07-740(2)(c).

Labor Unions that any date before March 1, 2019, would be prejudicial to them. We find that affording three weeks for opponents of the settlement to file testimony and exhibits provides a fair and adequate opportunity for them to evaluate and address any modifications or additions that the settlement agreement may present, particularly in light of the fact that much of their efforts to develop testimony and exhibits opposing the Joint Applicants' initial filing retains its value in any testimony opposing the settlement. The limited scope of the Non-Settling Parties' participation in this proceeding lends further support to this conclusion.³

18 We reject the Settling Parties' proposal to schedule the settlement hearing on February 8, 2019. WNIDLC's counsel is unavailable on that date due to a previously scheduled court appearance. All parties are, however, available on February 15, 2019. The parties are reminded that the Commission is accustomed to accommodating witness testimony at a particular time during a hearing based on witness availability.

19 Accordingly, we determine that suspending the procedural schedule as requested by the Settling Parties is appropriate. Consistent with our discussion above, we adopt the procedural schedule attached to this Order as Appendix A.

20 **DISCOVERY LIMITATIONS.** No party raised the question of discovery limitations from the date the settlement is filed on January 15, 2019, until the hearing date. We find that limitations on discovery are appropriate and consistent with the limitations either previously agreed to by the parties or set by the Prehearing Conference Order. Accordingly, we limit each party opposing the settlement to 10 data requests to the Settling Parties. We limit each settling party to 5 data requests to the parties opposing the settlement. Additionally, we limit the response time for data requests after the filing of the settlement agreement to 5 business days. We limit the response time for data requests after the filing of the Non-Settling Parties' testimony and exhibits opposing the settlement agreement to 2 business days.

³ WNIDCL and the Labor Unions were granted party status, but were "limited to matters specifically addressing the safety and reliability of service to customers where its members are actually involved in the provision of such service." *In re the Joint Application of Puget Sound Energy, et. al., for an Order Authorizing Proposed Sales of Indirect Interests in Puget Sound Energy*, Docket U-180680, Order 03, Prehearing Conference Order, 5, 6, ¶¶ 17, 23 (Nov. 21, 2018). The Commission also expressly declined to consider any labor relations matters in this proceeding covered by the collective bargaining agreement.

- 21 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and serve all proposed cross-examination exhibits by **8 a.m., February 14, 2019**. The Commission requires electronic copies in searchable .pdf (adobe acrobat or comparable software), the original paper copy, and four (4) paper copies of the exhibits. If any of the exhibits contain information designated as confidential or highly confidential, parties must also file an electronic copy in searchable .pdf (adobe acrobat or comparable software), the original paper copy, and one (1) paper copy of each redacted version of each such exhibit. The exhibits must be grouped according to the witness the party intends to cross examine with the exhibits. The paper copies of the exhibits also must be organized into sets that are tabbed and labeled.
- 22 **EXHIBIT LISTS.** With each submission of prefiled testimony and exhibits, the party making the submission must include a preliminary exhibit list that identifies each submitted exhibit in the format the Commission uses for exhibit lists it prepares for evidentiary hearings. Each party must file and serve a final list of all exhibits the party intends to introduce into the evidentiary record, including all prefiled testimony and exhibits, as well as cross-examination exhibits by **8 a.m., February 14, 2019**.
- 23 **CROSS-EXAMINATION TIME ESTIMATES.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file witness lists or cross-examination time estimates but must provide them to the administrative law judges (rayne.pearson@utc.wa.gov and andrew.j.oconnell@utc.wa.gov) and the other parties by **8 a.m., February 14, 2019**.
- 24 **NOTICE OF HEARING.** The Commission will hold a hearing to consider the proposed settlement in this matter on **February 15, 2019**, at **1 p.m.**, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.

ORDER

The Commission orders that:

- 25 (1) The procedural schedule in Docket U-180680 is modified as reflected in Appendix A to this Order.

- 26 (2) Discovery from the filing of the settlement agreement until the hearing is limited as indicated in Paragraph 20, above.

Dated at Olympia, Washington, and effective January 11, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANDREW J. O'CONNELL
Administrative Law Judge

**APPENDIX A
MODIFIED PROCEDURAL SCHEDULE
DOCKET U-180680**

EVENT	DATE
Filing of Settlement Agreement ⁴	January 15, 2019
Filing of Testimony Supporting Settlement	January 18, 2019
If Public Counsel Joins Settlement, Filing of Public Counsel's Supporting Testimony	January 22, 2019
Filing of Testimony Opposing Settlement ⁵	February 8, 2019
Cross-Examination Exhibits, Witness Lists, and Time Estimates	February 14, 2019, by 8 a.m.
Settlement Hearing	February 15, 2019, at 1 p.m.

⁴ Response time to data requests will be 5 business days. Refer to Order 05 for limitations on data requests.

⁵ Response time to data requests will be 2 business days. Refer to Order 05 for limitations on data requests.