

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

PUGET SOUND ENERGY

Respondent.

DOCKET UG-230393

PUBLIC COUNSEL'S RESPONSE
TO PUGET SOUND ENERGY'S
MOTION FOR LEAVE TO FILE
REVISED TESTIMONY

1. The Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) responds to Puget Sound Energy's (PSE or Company) Motion for Leave to File Revised Testimony (Motion). Public Counsel urges the Washington Utilities and Transportation Commission (Commission) to deny PSE's motion. Granting the motion would be unduly prejudicial to all other parties, because PSE's new testimony uses information sought in discovery, but not provided. This same issue is the subject of Public Counsel's pending Motion to Strike Certain Testimony Filed by Puget Sound Energy.¹

I. WHEN ASKED FOR COMPREHENSIVE INFORMATION ABOUT LEGAL COSTS IN DISCOVERY, PSE LIMITED ITS RESPONSE TO COSTS FROM POST-2016 DATA, AND PARTIES REASONABLY RELIED ON THE DATA PROVIDED.

2. By its own admission, PSE did not provide pre-2017 information about its legal costs related to the Tacoma LNG Facility to other parties during discovery.² During discovery, Public Counsel specifically requested PSE's monthly legal costs and associated labor hours related to

¹ Public Counsel's Mot. to Strike Test.

² Puget Sound Energy's Mot. for Leave Revise Test., ¶ 3.

the Tacoma LNG Project and how those expenses were allocated.³ In particular, Public Counsel requested the following:

PUBLIC COUNSEL DATA REQUEST NO. 026:

REQUESTED BY: Robert Earle

Re: Legal Costs.

- a. Please explain how legal costs were allocated to the regulated part of the Tacoma LNG Project and Puget LNG. Please provide justification for your answer.
 - b. Please provide an Excel spreadsheet showing monthly legal costs and associated labor hours from the inception of the project to present for the Tacoma LNG Project, distinguishing inside counsel costs and hours from outside counsel costs and hours.
 - c. Please provide all billing records pertaining to legal costs incurred for the Tacoma LNG Project.⁴
3. PSE objected, stating that it could not provide the requested information from 2013 through 2016. Now, however, PSE requests to revise its testimony to include the exact information it stated it could not provide.⁵ Public Counsel accepted PSE's statement that it could not provide the information requested, and drew conclusions from the information PSE chose to provide in discovery. The Commission should not allow PSE to now present evidence drawn from information that it withheld during discovery.

II. PSE'S REQUEST TO REVISE TESTIMONY IS UNJUST BECAUSE IT COMES AFTER THE DISCOVERY DEADLINE, AFTER PARTIES SUBMITTED CROSS EXHIBITS AND CROSS ESTIMATES, AND DAYS BEFORE THE HEARING.

³ Robert L. Earle, Exh. RLE-12 (Puget Sound Energy's Response to Public Counsel's Data Request No. 26) (filed Sept. 8, 2023).

⁴ *Id.*

⁵ *Id.* in the response to subsection (b) PSE stated,

Prior to receiving the final order in Docket UG-151663, which was issued in the fourth quarter of 2016, PSE did not separately track legal costs and therefore, cannot provide the requested information for 2013 through 2016. However, PSE notes that the category of costs in which external legal costs would have been included was not more than \$1 million per year in total.

4. PSE’s proposed revision comes at a point in the procedural schedule that unduly prejudices Public Counsel. PSE had the data request on July 18, 2023, requesting comprehensive information about the Company’s legal costs associated with the Tacoma LNG Facility. PSE responded to the discovery on August 1, 2023, and made a conscious decision to not collect some of the information sought and represent that the information was not available.⁶ Public Counsel filed response testimony on September 8, 2023, pursuant to the Commission’s procedural schedule. PSE proposes its revision, which consists of unsubstantiated statements about its legal costs before 2017, at a point during the procedural schedule where parties neither have the opportunity to seek discovery, nor can they present cross estimates or cross exhibits on these revisions. This is unacceptable.
5. PSE argues that the Commission should allow the proposed revision so that the record is “complete and accurate.”⁷ The best record is one that results from the parties being able to fairly obtain and examine the relevant evidence through discovery. Concerns of fair play, due process, and orderly proceedings all counsel against allowing a party to withhold evidence sought through discovery and later introduce that evidence in the last stages of the adjudication. Permitting one party to do so effectively prevents other parties from examining and responding to the evidence, precluding them developing a full and complete record, and denying the Commission access to the best record possible on which to base its decisions.
6. PSE provided a supplemental response to Public Counsel’s data request providing additional information about the Company’s legal costs on November 1, 2023, the day after the Company filed its Motion and nearly a month after the Company filed its rebuttal testimony.

⁶ *Id.* in the response to subsection (b).

⁷ PSE Mot for Leave, ¶ 4.


Providing a supplemental response on the eve of hearing, long after the Company became aware that its prior response was no longer correct or complete, unfairly deprives the parties and the Commission of a full and complete record.⁸ Indeed, PSE's actions unfairly undermines the discovery process.

III. THE COMMISSION SHOULD DENY PSE'S MOTION

7. The Commission should deny PSE's Motion because the Company seeks to introduce evidence it refused to provide during discovery. Public Counsel reasonably relied upon PSE's representation in its prior answer that certain information was not available, and PSE failed to supplement its response during the discovery period. PSE should not be allowed to now offer the exact evidence that was sought, but not provided in discovery.

DATED this 3rd day of November, 2023.

ROBERT W. FERGUSON
Attorney General

/s/ 

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⁸ See WAC 480-07-405(8).