

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of the Petition of PUGET SOUND ENERGY, INC.</p> <p>For Approval of a Power Purchase Agreement for Acquisition of Coal Transition Power, as Defined in RCW 80.80.010, and the Recovery of Related Acquisition Costs</p>	<p style="text-align: center;">DOCKET NO. 121373</p>
<p>In the Matter of the Petition of PUGET SOUND ENERGY, INC. and NW ENERGY COALITION</p> <p>For an Order Authorizing PSE to Implement Electric and Natural Gas Decoupling Mechanisms and to Record Accounting Entries Associated with the Mechanisms</p>	<p style="text-align: center;">DOCKET NOS. UE-121697 and UG-121705 (Consolidated)</p>
<p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,  Complainant,  v.  PUGET SOUND ENERGY, INC.,  Respondent.</p>	<p style="text-align: center;">DOCKET NOS. UE-130137 and UG-130138 (Consolidated)</p> <p style="text-align: center;">PUGET SOUND ENERGY, INC.'S RESPONSE TO PUBLIC COUNSEL'S MOTION FOR LEAVE TO DEPOSE KENNETH ELGIN</p>

**I. INTRODUCTION**

1. Puget Sound Energy, Inc. ("PSE") submits to the Washington Utilities and Transportation Commission ("the Commission") this response to Public Counsel's Expedited Motion for Leave to Depose Kenneth Elgin, filed April 10, 2013 ("Motion"). Public Counsel seeks leave to depose

Staff analyst Kenneth Elgin, who is not a witness in these proceedings, regarding all matters related to the proposals under consideration in these five dockets, as well as the Multiparty Settlement filed in these proceedings.<sup>1</sup> For the reasons described below, PSE respectfully requests that the Commission deny Public Counsel's Motion.

## II. ARGUMENT

### A. Mr. Elgin is not a witness, and Public Counsel has not Shown that he Possesses Information Significant to its Case

2. WAC 480-07-410(1) states that a party may only depose people who have been named as a witness by another party, unless the presiding officer finds that the person appears to possess information significant to the party's case. Mr. Elgin is not a witness in any of these proceedings and Public Counsel has not shown that Mr. Elgin possesses any information significant to Public Counsel's case. Public Counsel states that it received data request responses from Staff on April 3, 2013, "and as a result, requests leave to depose Mr. Elgin...".<sup>2</sup> Yet Mr. Elgin is not listed as a responder on any such data request responses, and Public Counsel has not identified any information that Mr. Elgin appears to possess that is significant to Public Counsel's case. The Commission has refused to compel depositions in cases similar to this, when the movant has failed to adequately show a purpose for the deposition.<sup>3</sup> Here, there is no purpose for Mr. Elgin's deposition because Public Counsel has already deposed both Staff witnesses in this proceeding. In fact, Public Counsel deposed Staff witness Thomas Schooley on April 10, 2013, a week after

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<sup>1</sup> See Motion at ¶ 5.

<sup>2</sup> *Id.*

<sup>3</sup> *In re: Waste Management of Wash., Inc.*, Docket TG-120033, Order 06 at ¶ 6, (Nov. 5, 2012).

Public Counsel received the data request responses that it states are the basis for its Motion.

Public Counsel had a whole week to review the data request responses and question Mr.

Schooley about them during his deposition; but instead, Public Counsel waited until the date of the discovery cutoff to request leave (expeditiously) to depose Mr. Elgin.

**B. Public Counsel's Request Impedes the Discovery Process**

3. The Commission has expressed that the role of depositions is to increase efficiency.

[D]epositions are infrequently authorized in Commission adjudicative proceedings and generally are reserved for circumstances in which that form of discovery is the most efficient and least burdensome means of obtaining relevant information.<sup>4</sup>

Judge Moss supported this position in the prehearing conference for these proceedings, stating

that the Commission rarely indulges in deposition practice, yet "we are hoping to expedite the whole discovery process".<sup>5</sup> The Commission has refused to compel depositions in instances

where it would increase the burden on parties rather than increase efficiency.<sup>6</sup> In the 2001

*Olympic Pipe Line* general rate case, the Commission found that a deposition scheduled with five

days' notice approximately one month before the hearing would unduly and without good cause

interfere with parties' hearing preparation and substantially harm parties' ability to prepare for

hearing.<sup>7</sup> Here, Public Counsel has made that same request, similarly without showing good

cause. Accordingly, the Commission should deny Public Counsel's Motion.

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<sup>4</sup> *Waste Management*, Docket TG-120033, Order 01 at ¶ 8

<sup>5</sup> TR. 458:19-25.

<sup>6</sup> *WUTC v. Olympic Pipe Line Company*, Docket TO-011472, 14th Supp. Order, at ¶ 12, (June 5, 2002).

<sup>7</sup> *Id.*

4. Even assuming for argument's sake that Mr. Elgin does possess information significant to Public Counsel's case, Public Counsel could have filed its Notice of Deposition a week before it did. Public Counsel provides no explanation for why data requests are insufficient,<sup>8</sup> why it delayed filing its Motion until the discovery cutoff, how Mr. Elgin's deposition will expedite discovery, or any good cause to support its request.

### III. CONCLUSION

5. Public Counsel should not be entitled to depose a Staff analyst who is not a witness to these proceedings. Such deposition would impede the discovery process rather than expedite it, and Public Counsel has not shown good cause for its request. For these and the foregoing reasons, the Commission should deny Public Counsel's request.

DATED: April 12, 2013

Respectfully Submitted,

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<sup>8</sup> In addition to filing its Motion and Notice of Deposition, Public Counsel issued 42 data requests on the date of the discovery cutoff. Public Counsel provides no explanation for why data requests are not sufficient means of discovery regarding Mr. Elgin.