

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of
PUGET SOUND ENERGY, INC.
for a Determination of Emissions
Compliance

DOCKET UE-121594
MOTION TO DISMISS BRIEF
ADJUDICATIVE
PROCEEDING/EXPEDITED
CONSIDERATION REQUESTED

1 This matter involves a petition by Puget Sound Energy for an “emissions performance determination” by the Commission. By notice dated October 4, 2012, the Commission set this matter for a Brief Adjudicative Proceeding (BAP) under the Administrative Procedure Act (APA).

2 However, the APA allows the use of BAPs only in matters that are “entirely within one or more categories for which the agency by rule has adopted”. RCW 34.05.482(1)(c). An “emissions performance determination” does not fit any of the five categories the Commission has adopted in WAC 480-07-610(2)(a) – (e).¹ Therefore, a BAP is not available.

3 Staff acknowledges that in WAC 480-07-610(2), the Commission states that “matters suitable for brief adjudication” are “not necessarily limited to” the five categories the

¹ The categories the Commission has prescribed in WAC 480-07-610(a)-(e) are: “(a) Review of denials or partial denials of applications that are not protested. (B) Contested applications for temporary authority. (3) Proceedings that could lead to suspension, cancellation or revision of authority for failure to maintain tariffs, pay fees, or file required documents. (d) Formal complaints in which notice and an opportunity to participate in the proceeding need not be given to persons other than the parties. (e) Petitions for mitigation of penalty assessments under RCW 80.04.405 and 81.04.405, including any challenge to the validity of a penalty assessment or the existence of an underlying violation.”

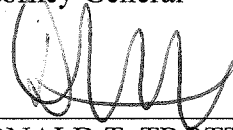
Commission has prescribed. However, the APA is quite clear that for BAP procedures to apply, this matter must be “entirely within” the categories the Commission has prescribed by rule. RCW 34.05.482(1)(c). We cannot reconcile this explicit APA directive with the “include, but are not necessarily limited to” language of the Commission’s BAP rule.

4 For these reasons, the Commission should dismiss the BAP and set this matter for hearing consistent with the APA.

5 Because the BAP is scheduled for October 12, 2012, Staff requests the Commission grant expedited consideration of this motion. The Commission may wish to hear the motion at the same time and place as the currently-scheduled BAP.

Respectfully submitted,

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