

**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 OPPOSITION TO PUBLIC COUNSEL'S MOTION FOR LEAVE TO PRESENT ORAL SURREBUTTAL</p>

I. INTRODUCTION

1. Pursuant to WAC 480-07-375(4), Puget Sound Energy, Inc. ("PSE") respectfully requests that the Washington Utilities and Transportation Commission ("the Commission") deny Public Counsel's Motion for Leave to Present Oral Surrebuttal, filed May 10, 2013 ("Motion"). Public

Counsel seeks leave to present oral surrebuttal testimony of Public Counsel witnesses James Dittmer and Stephen Hill at this week's hearing. The Commission should deny Public Counsel's unusual and unwarranted request. PSE's rebuttal testimony does not introduce new matters or issues, and Public Counsel's Motion fails to demonstrate a need for surrebuttal.

II. PUBLIC COUNSEL HAS NOT DEMONSTRATED A NEED FOR ORAL SURREBUTTAL

2. Public Counsel provides no support for its unusual request for oral surrebuttal other than to state that the rebuttal testimony includes detailed *responses* to Public Counsel response testimony and analysis not previously in this case.¹ This does not meet the standard for surrebuttal that the Commission has set.

The Commission does not lightly grant the opportunity for surrebuttal. In a complaint hearing, the last word procedurally should be with the complainant, except in rare circumstances. When surrebuttal is allowed, it should be directed toward specific rebuttal testimony that has demonstrably raised new matter in the hearing.²

While the PSE proceeding originated from petitions and a tariff filing, rather than a complaint, the policy for limiting surrebuttal applies here just as it did in *AT&T Comm. v. Verizon*. PSE and the settling parties carry the burden of showing that the Multiparty Settlement is in the public interest. As such, the last word should belong to PSE and the other settling parties.

¹ Motion at ¶ 2 (emphasis added). Public Counsel does not point to any specific analysis that requires or justifies surrebuttal.

² *AT&T Communication of the Pac. N.W., Inc. v. Verizon N.W., Inc.* Docket No. UT-020406, 7th Supp. Order ¶ 43 (April 8, 2003).

3. Public Counsel does not claim that new matters have been raised in rebuttal. Rather, Public Counsel admits that the rebuttal testimony includes *responses* to Public Counsel witnesses. Moreover, the fact that PSE filed testimony from new witnesses on rebuttal does not justify oral surrebuttal at the hearing. After Public Counsel, the Industrial Customers of Northwest Utilities ("ICNU") and other intervenors raised, in their response testimony, issues regarding cost of capital, capital structure and tax that are outside the scope of this proceeding, PSE submitted testimony and analysis from additional witnesses Daniel A. Doyle and Matthew R. Marcellia to rebut these issues. Mr. Doyle responds to issues raised by ICNU, Public Counsel and Kroger regarding PSE's capital structure and cost of capital.³ Mr. Marcellia responds to issues raised by Public Counsel, ICNU and Kroger regarding accumulated deferred income taxes, tax net operating loss and the proper income tax rates to use.⁴ Likewise, Mr. Johnson's rebuttal testimony does not introduce any new issues; he responds to policy issues raised by intervenors in their response testimony. He rebuts claims by intervenors that the Multiparty Settlement "is a calculated attempt to subvert the regulatory process,"⁵ that the global settlement contains inadequate consumer protections,⁶ that the K-factor rate plan should be replaced by multiple expedited rate filings,⁷ and that "revenue decoupling is an inappropriate and unwarranted departure from traditional ratemaking principles"⁸ among other issues. Mr. Johnson

³ See Doyle, Exh. No. ___(DAD-1T) at 1:15-25.

⁴ See Marcellia, Exh. No. ___(MRM-1T) at 1:18-2:3.

⁵ See Deen, Exh. No. ___(MCD-1T) at 10:18-20.

⁶ See Deen, Exh. No. ___(MCD-1T) at 9.

⁷ See Dittmer, Exh. No. ___(JRD-1T) at 41-43.

⁸ Gorman, Exh. No. ___(MPG-1T) at 21:17-18.

rebutts these claims, in part, by discussing how the Multiparty Settlement is consistent with the public interest.

4. Public Counsel and other intervenors raise issues and undertook analyses in response testimony that were not addressed in PSE's direct testimony. From this action, it can reasonably be expected that PSE would respond to these issues and provide analysis to support its response in rebuttal testimony. This pattern of events does not warrant the need for surrebuttal. Moreover, PSE has a right in rebuttal to respond to *all* issues raised by *all* intervenors—not just the issues raised by Public Counsel. And PSE's rebuttal of an issue raised by an intervenor other than Public Counsel does not give Public Counsel the right to proffer surrebuttal on that issue.

5. Finally, the close of discovery should not be used as a justification for oral surrebuttal.⁹ Public Counsel could have requested leave to undertake additional discovery after PSE filed its rebuttal testimony, as discussed at the prehearing conference, and such discovery could have been provided on a shortened turn-around time. More importantly, oral surrebuttal is not a substitute for discovery—it serves an entirely different purpose. Public Counsel has the opportunity to cross examine witnesses on their rebuttal testimony. Oral surrebuttal is unnecessary and unwarranted where there are no new matters raised on rebuttal.

III. CONCLUSION

6. PSE's rebuttal testimony responds to the issues raised by intervenors in response testimony. Public Counsel does not, and cannot, point to any new issues that PSE has raised for

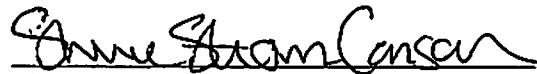
⁹ See Motion at ¶ 3.

which surrebuttal would be appropriate. Public Counsel's request is unwarranted and should be denied.

DATED: May 14, 2013

Respectfully Submitted,

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