

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	DOCKET NO. UE-121373
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	RESPONSE OF THE INDUSTRIAL
)	CUSTOMERS OF NORTHWEST
v.)	UTILITIES IN OPPOSITION TO
)	STAFF’S MOTION FOR 30-DAY
PUGET SOUND ENERGY, INC.,)	EXTENSION OF TIME
)	
Respondent.)	
_____)	

I. INTRODUCTION

1 Pursuant the Washington Utilities and Transportation Commission’s (“WUTC” or the “Commission”) notice, the Industrial Customers of Northwest Utilities (“ICNU”) submits this response in opposition to Commission Staff’s (“Staff”) motion for a 30-day extension of time to respond to Puget Sound Energy’s (“PSE”) Petition for Reconsideration and Motion to Reopen the Record (“Motion for Extension”). Staff’s Motion for Extension is not a request for more time to draft a response to PSE’s reconsideration request, but is instead an effort to gain more time to engage in settlement discussions with PSE to resolve this and a number of unrelated cases. Staff has failed to demonstrate good cause for the delay, and the Commission should reject Staff’s motion and address the merits of PSE’s reconsideration without additional delay.

II. ANSWER

A. The Commission Should Deny the Motion for a Continuance

1. Legal Standard

2 The Commission will grant a continuance if the requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the Commission.^{1/}

2. Staff Has Not Demonstrated Good Cause for a Continuance

3 In support of its request for a 30-day extension of time to file answers to PSE's Request for Reconsideration and Motion to Reopen the Record, Staff states that Staff and PSE agree "that this continuance will allow the parties time to reach a resolution of not only the TransAlta Centralia power purchase agreement docket, but also PSE's decoupling dockets, as well as PSE's expedited rate filing (ERF) dockets"^{2/} At the time Staff filed its motion, PSE's decoupling dockets were being considered through a series of open meetings and technical conferences, and its ERF dockets had not yet been filed. ICNU was unaware that PSE and Staff were negotiating a settlement of these five separate unrelated proceedings.

4 Staff does not explain why the resolution of five entirely unrelated dockets should somehow be considered good cause for a continuance of time for submitting answers to PSE's petition for reconsideration of the Commission's decision in the TransAlta Centralia power purchase docket. Staff and PSE appear to propose a global settlement of three unrelated issues: 1) a power purchase agreement; 2) a decoupling mechanism theoretically designed to promote conservation; and 3) an expedited rate case filing. As noted above, in one of the TransAlta

^{1/} WAC 480-07-385(2).

^{2/} Staff's Motion for Extension of Time at ¶ 3 (citations omitted).

dockets, an order on the merits has been issued; in the decoupling docket, the Commission has expressed a desire to continue the collaborative open meeting/workshop process; and in the last two, no case had yet been filed. There is no apparent logical or policy reason for consolidation of three unrelated issues for settlement purposes, each in a drastically different procedural posture, and Staff does not offer an explanation.

5 The present docket has been decided on a fully developed record. This record must stand on its own. Neither the conservation issues purportedly at issue in the decoupling docket nor the claimed regulatory lag behind the ERF docket are in any way related to the issues that have been developed in this docket. Thus, joint resolution of these cases is inappropriate. Each party to these five dockets should be given its right to fully investigate and litigate the issues in each respective docket.

3. Staff’s Request Prejudices Parties and is Not in the Public Interest

a. Secret Settlement Discussions Violate the Commission’s Rules

6 Staff and PSE’s proposal to settle five unrelated PSE dockets violates the Commission’s rules that prohibit secret settlement discussions, and by so doing prejudices the other parties. The Commission’s rules require that all parties (or even potential parties) be invited to the first settlement discussion.^{3/} Specifically, the Commission will set an initial settlement conference in the procedural schedule, and, while the parties can reschedule the initial settlement conference, they must provide ten days’ notice and invite all parties, including any person that was a party in the utility’s last proceeding.^{4/} These rules are intended to ensure that

^{3/} WAC § 480-07-700(3).

^{4/} Id.

Staff does not start informal or formal settlement negotiations without all interested parties having a seat at the table.

7 It appears as though informal settlement discussions have been taking place between Staff and PSE. ICNU was not informed of any meetings in these five dockets. Staff’s motion indicates that these discussions are sufficiently advanced that Staff and PSE can represent that settlement “will” result from an extension of time. Nonetheless, two of the five dockets that Staff and PSE are planning to include in their global settlement, Docket Nos. UE-130137 and UG-130138 had not yet been filed at the time Staff filed its motion. Thus, PSE and Staff appear to have been engaged in settlement discussions regarding these dockets prior to PSE’s case filing, and therefore, before the first settlement conference. This violates the Commission’s rules by attempting to resolve a case without any participation by impacted parties. Similarly, PSE and Staff’s proposal that they be allowed to continue to engage in settlement discussions regarding the now newly-filed expedited rate proceeding violates the requirement that all parties be provided notice and an opportunity to attend the first settlement conference.

8 PSE and Staff’s settlement negotiations regarding the decoupling proceeding also violate the intent and purpose of the Commission’s rules prohibiting secret settlements, which is that all parties be provided an opportunity to participate in settlement discussions. PSE and the Northwest Energy Coalition (“NWECC”) filed their petition for decoupling as an “adjudicative” proceeding.^{5/} The Commission has not yet decided whether to dismiss or investigate the petition; however, the Commission made it clear that it expected all parties to be invited to participate in any future discussions regarding the merits of the decoupling petition. In addition,

^{5/} PSE/NWECC Petition, Docket Nos. UE-121697 and UG-121705 (Oct. 25, 2012).

it is contrary to the Commission's rules for Staff to be engaging in settlement discussions without noticing all parties, as there has been no prehearing conference, and no formal settlement negotiations have been scheduled.

b. The Parties Are Prejudiced By Staff's Late Filing

9 On February 1, 2013, Staff filed its motion for continuance, alerting the parties to its ongoing settlement negotiations. In light of the February 6, 2013 deadline for action on PSE's Motion for Reconsideration, Administrative Law Judge Moss issued a notice requiring that responses to Staff's motion be filed by 5:00 P.M., February 4, 2013.

10 This means that parties have been given one business day to consider Staff's request and prepare appropriate responses. This is entirely insufficient, given Staff's notification that it is engaged in wide ranging and apparently inappropriate settlement conferences that attempt to bring together five unrelated dockets. For this reason, Staff's petition is prejudicial to all other parties. Parties should be provided far more time to address why the basis for Staff's Motion is procedurally and legally improper. . For example, Staff proposes to settle and resolve all issues in PSE's controversial decoupling proposal in 30 days, which would be all but impossible if PSE and Staff have not already reached an agreement in principle on decoupling.

c. Settlement in this Fashion is Highly Unusual and if Endorsed by this Commission Would Fundamentally Undermine the Ability of Parties to Effectively Participate in WUTC Dockets

11 In the sixteen years that Davison Van Cleve's attorneys have been representing ICNU before the WUTC, we have never seen a procedural maneuver like that presented in Staff's Motion for Extension. At issue are major policy, legal, and technical issues. These issues must not be resolved through back room deals. In order for there to be proper consideration of

all of the issues, all parties must be able to engage in full and complete discovery. The decoupling and the expedited rate filing proceedings have not been subject to full discovery.

12 Further, it is far from clear that Staff can legally settle this docket, which is subject to a Commission decision on its merits. It is the burden of a party requesting reconsideration to demonstrate that the Commission has made an error of law, or that new facts that were not available at the time of the decision justify modification of an order.^{6/} The question of whether the Commission has made an error of law cannot be answered by a Staff-brokered settlement. ICNU believes that settlement of a petition for reconsideration is legally impermissible, and would create a dangerous policy precedent.^{7/}

13 The parties, including ICNU, are highly prejudiced by any attempt to prematurely settle matters without having all interests at the table. Due to the short amount of time to respond to this motion, ICNU is simply unable to fully research all of the legal and policy infirmities presented. The Commission should put a stop to these improper proceedings and deny Staff's Motion.

III. CONCLUSION

14 Staff and PSE appear to be developing a global settlement of five dockets covering completely unrelated issues, depriving parties of their seats at the settlement table, and on a timeline that makes it impossible for parties to respond with due diligence. For these reasons, the Commission should reject Staff's request for an extension of time to respond to PSE.

^{6/} In re the Matter of the Application of Avista Corp. for Authority to Sell Its Interest in the Coal-Fired Centralia Power Plant, Docket No. UE-991255 et al., Fourth Suppl. Order ¶ 40 (Apr. 21, 2000).

^{7/} ICNU is unable to fully develop this argument because of the foreshortened schedule for submission of a response to Staff, but would be happy to develop further legal support for this position if time were allowed.

Dated in Portland, Oregon, this 4th day of February, 2013.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Joshua D. Weber

Melinda J. Davison

Joshua D. Weber

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 telephone

(503) 241-8160 facsimile

mjd@dvclaw.com

jdw@dvclaw.com

Of Attorneys for Industrial Customers
of Northwest Utilities