



ATTORNEY GENERAL OF WASHINGTON

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February 4, 2013

SENT VIA E-MAIL AND ABC LEGAL MESSENGER

David W. Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: RE: *Petition of Puget Sound Energy, Inc. 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;*
Docket UE-121373

Dear Mr. Danner:

Enclosed please find the original and ten (10) copies of Public Counsel Response to Staff Motion for 30-day Extension for filing in the above-entitled docket.

Sincerely,

Simon J. Fitch
Senior Assistant Attorney General
Public Counsel Division
(206) 389-2055

SJf:cjw
Enclosure

CERTIFICATE OF SERVICE
Docket UE-121373

I hereby certify that a true and correct copy of the Public Counsel Response To Staff Motion For 30-Day Extension was sent to each of the parties of record shown below in sealed envelopes, via: U.S. Mail and E-Mail.

SERVICE LIST

**** = Receive Highly Confidential; * = Receive Confidential; NC = Receive Non-Confidential**

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POLICY DIRECTOR

DATED: February 4, 2013.



CAROL WILLIAMS
Legal Assistant

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

PUGET SOUND ENERGY, INC.

Petition 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

DOCKET UE-121373

PUBLIC COUNSEL RESPONSE TO STAFF MOTION FOR 30-DAY EXTENSION

I. INTRODUCTION

1. Public Counsel files this response to Commission Staff's Motion for 30-Day Extension of Time to File Answers To Puget Sound Energy's (PSE) Petition for Reconsideration And Motion To Reopen The Record (Staff Motion). Public Counsel does not require additional time to prepare its response to the Petition for Reconsideration and opposes the motion for the reasons stated below. Staff has not demonstrated good cause as required by Commission rule. Public Counsel and the interests of PSE's customers are prejudiced by the continuance requested. Public Counsel respectfully requests the motion be denied and the Commission proceed to resolve this docket promptly and expeditiously.

II. RESPONSE TO STAFF MOTION

A. The Motion Is Untimely.

2. Staff's motion is untimely. Under the Commission rule governing motions for continuance, "[a] party must file any written motion for continuance at least five business days prior to the deadline as to which the continuance is requested[.]" WAC 480-07-385(3)(a). The

due date was, therefore, January 30, 2013. The motion was filed two days late, on February 1, 2013. While the rule states that “the commission may consider requests for continuance that are made after the deadlines stated in this rule if the requester demonstrates good cause that prevented a timely request,” Staff’s Motion does not acknowledge that it was filed after the deadline nor does it state or demonstrate good cause for the untimeliness. Staff identifies no circumstance that prevented Staff from filing the motion in a timely manner.

B. No Good Cause Shown For A Continuance.

3. The continuance rule, in WAC 480-07-385(2), also states:

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.

Staff has also failed to meet these standards.

4. While the Staff motion states in conclusory fashion that the requirements of the rule have been met, the only justification actually stated for Staff’s request is that the continuance “will allow the parties time to reach a resolution of not only” the Centralia docket but also the PSE Decoupling dockets,¹ and the new PSE Expedited Rate Filing (ERF) docket, filed last Friday afternoon.² The Staff states that the “public interest² will be served by a global resolution” of these dockets but provides no factual, legal, or policy support for the statement.

5. Staff does not explain what connection exists between this Centralia PPA docket and the other two PSE dockets mentioned. Public Counsel submits that there is none. Public Counsel is

¹ Dockets UE-121697 and UG-121705.

² Dockets UE-130137 and UG-130138.
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aware of no legal or factual connection.³ Staff provides no reason why this proceeding should be delayed by linking it to further process in unrelated dockets.

6. Neither does Staff explain its reference to settlement discussions regarding Centralia. Settlement discussions were convened earlier in the proceeding pursuant to Commission order and settlement rules but were not successful. An evidentiary hearing was then held before the Commission, oral argument was held, and the case submitted for decision. A final order has been issued based on that record and the applicable law. The record is now closed.⁴

7. The only issue pending at this stage of the Centralia case is whether the Commission wishes to reconsider its order, or reopen the record, based on PSE's motion. This case is now a matter for the exercise of the Commission's discretion, as applied to the record before it, according to the provisions of the Coal Energy Transition Bill and other applicable statutes in Title 80. It is not in the hands of the Commission Staff, PSE, or any other party to negotiate or modify the terms of the Commission Final Order at this stage of the case. As the Commission rules state: "[t]he Commission cannot delegate to parties the power to make final decisions in any adjudicative proceeding."⁵ Upon issuance of a final order, the proceeding is governed by Subpart E of the Commission's procedural rules regarding Orders and Post-Order Process.⁶ There is no provision in the Commission rules for the settlement procedure suggested by Staff here and Staff cites no precedent for such an approach. Efforts by Staff and PSE to somehow modify the Commission's final order outside of the reconsideration process now are improper.

³ The Centralia PPA docket is not consolidated with any other docket. No motion for consolidation has been made by any party. Consolidation is appropriate for "proceedings in which facts or principles of law are related." WAC 480-07-320. No such showing has been made here.

⁴ Subject to a ruling on PSE's Motion to Reopen.

⁵ WAC 480-07-700.

⁶ WAC 480-07-800 through 885.

8. While Staff states the continuance will allow “the parties time to reach a resolution” of three PSE dockets, it is not clear what is meant by the term “the parties.” Staff does not explain how it can represent that parties to the PSE decoupling docket or to the newly filed PSE ERF docket are willing or prepared to enter into “global resolution” discussions involving all three cases. No formal notice or invitation has been provided to parties in any of the three referenced dockets that any settlement discussions for the parties are being initiated, nor has Public Counsel been included in any settlement discussions in any of the dockets. No “global resolution” settlement discussions have been convened. To Public Counsel’s knowledge, this motion is the first suggestion that such an effort would be attempted.

9. With regard to the PSE ERF docket, the parties are not known at this point. No prehearing conference has been held and the time for appearances and interventions has not run. The PSE ERF filing represents a novel type of regulatory proposal that will require serious review by the Commission and all parties, since it proposes to change the way rates are set for PSE’s customers. PSE has filed detailed testimony of three witness and extensive detailed supporting accounting data. Parties will need time to review the filing and conduct discovery prior to determining their positions regarding the proposal, and prior to engaging in any settlement discussions.⁷ Parties may wish to retain experts to assist with the analysis.⁸

⁷ The Commission’s discovery rule is not yet in effect in the PSE ERF docket. Once in effect, the rule allows for ten business days for responses by PSE to data requests. Preparation, issuance, and review of discovery will require a good portion of the 30 day period by itself. Multiple rounds of discovery are ordinarily required in most significant Commission proceedings.

⁸ A stakeholder group met with PSE several times in 2012 to discuss an ERF proposal. Those discussions did not yield any agreement on an ERF mechanism and were discontinued. Subsequent to the multi-stakeholder discussions held last fall, Public Counsel has not been consulted by PSE regarding its ERF proposal, nor advised by PSE that this filing would take place on Friday.

10. The PSE Decoupling docket, and the PSE ERF proposal have some overlapping issues. They should likely be consolidated and set for hearing so that, ultimately, a decision in these important matters can be made on the record. To date, PSE has resisted those recommendations, but now, apparently wants resolution in 30 days of both dockets. Now that the ERF proposal is filed, and once the PSE ERF docket proceeding has been established, parties determined, and discovery commenced, Public Counsel would anticipate that settlement discussions could occur between those parties interested in the ERF and decoupling proposals. There is no realistic basis, however, to assume that this can occur within the next 30 days. Staff provides no explanation as to why the 30 day time period is reasonable.

C. The Requested Continuance Will Prejudice Public Counsel and PSE Customer Interests.

11. Staff's Motion represents, with no stated basis, that the continuance "should not prejudice any of the parties to this case." Public Counsel, however, would be prejudiced by the requested extension of time. Public Counsel and PSE's customers have an interest in administrative finality with respect to the Centralia docket. In aid of that finality, the Commission's rules provide only a limited right to parties to request reconsideration and reopening of the record on narrow grounds. The timelines are short, and the rules contain an initial provision for an order within 20 days, unless the Commission decides to extend.⁹ Staff's Motion, without explanation, links the Centralia case to two unrelated dockets neither of which

⁹ WAC 480-07-850(5).
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have established schedules ordered by the Commission.¹⁰ Staff provides no basis for this Commission to believe that the Decoupling or ERF dockets can be fully resolved in 30 days. Staff's Motion creates the risk, indeed the likelihood, that the Centralia docket resolution could be delayed for some indeterminate period beyond 30 days as the issues in the other dockets are developed.

12. Most importantly, the procedure requested by Staff does not provide any certain opportunity for Public Counsel or other parties to respond to the petition for reconsideration. It is not clear when, if ever, Public Counsel or other parties would be able to file that response. The impact of the Staff request, and apparently the intent, is to cut-off parties' ability to respond to and receive a ruling on the reconsideration issue, by substituting an improper, undefined type of "settlement" process for the case.¹¹ This substantially prejudices the rights of Public Counsel and PSE customers in this docket.

13. Another cause of prejudice arises from the creation of an expectation of a "global resolution" of the three dockets in 30 days. As noted above, there is no proper basis for parties to be pursuing negotiations in this docket about the terms of the Commission Final Order on the Centralia PPA. Moreover, the Commission's final order in this matter should not be made into a bargaining chip for negotiations about unrelated issues in the other dockets. Approval of the Staff request would give the Commission *imprimatur* to this approach.

¹⁰ The Commission requested comments from parties in the decoupling dockets regarding the procedural approach to be adopted. Informal workshops have been held to discuss issues and proposals, but no procedural order has been issued and no schedule set.

¹¹ For example, if Staff and PSE file a purported bilateral "settlement" of the Centralia case, and the Commission initiates a settlement review process, the pending reconsideration petition would apparently not need to be addressed in Staff's view.

14. Finally, Public Counsel and other yet to be determined parties would be prejudiced in the newly filed PSE ERF docket by the *de facto* creation of a premature and unnecessarily accelerated settlement process that would not allow sufficient time for review, analysis, and discovery of the PSE proposal. Evaluation and review of those issues has nothing to do with the Centralia docket. PSE's customers are entitled to an adequate opportunity to conduct a fair review of the Company's new proposal.

III. CONCLUSION

15. Staff's Motion is untimely. It fails to establish good cause for late consideration. With regard to the continuance itself, Staff fails entirely to demonstrate that there is good cause for postponing the filing of responses, or postponing the resolution of this case. The Motion reflects an improper and unwarranted distortion and disregard of Commission rules and precedents to the detriment of the public interest in a fair decision-making process.

16. DATED this 4th day of February, 2013.

ROBERT W. FERGUSON
Attorney General

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Public Counsel Division