

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET UE-121373
)	
PUGET SOUND ENERGY, INC.,	)	ORDER 04
)	
For Approval of a Power Purchase	)	GRANTING MOTION FOR 30-DAY
Agreement for Acquisition of Coal	)	EXTENSION OF TIME TO FILE
Transition Power, as Defined in RCW	)	ANSWERS TO PUGET SOUND
80.80.010, and the Recovery of Related	)	ENERGY’S PETITION FOR
Acquisition Costs	)	RECONSIDERATION AND MOTION
	)	TO REOPEN THE RECORD
)	
	)	AND
)	
	)	NOTICE OF INTENTION TO ACT
	)	(by March 29, 2013, subject to further
.....	)	notice)

MEMORANDUM

1 The Washington Utilities and Transportation Commission (Commission) entered Order 03 - Final Order Granting Petition, Subject to Conditions, on January 9, 2013. Puget Sound Energy Inc. (PSE or Company) filed its Petition for Reconsideration and Motion to Reopen the Record on January 22, 2013. The Commission gave notice on January 23, 2013, that parties could file answers to PSE’s petition and motion by February 6, 2013.

2 On February 1, 2013, Commission Staff filed its Motion for 30-Day Extension of Time to File Answers to Puget Sound Energy’s Petition for Reconsideration and Motion to Reopen the Record. Staff’s motion states that PSE authorized Staff to represent the Company’s agreement with this request.

3 According to Staff’s motion:

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 (Docket UE-121373), but also PSE's decoupling dockets (Dockets UE-121697 and UG-121705), as well as PSE's expedited rate filing (ERF) dockets (Dockets UE-13XXXX and UG-13XXXX), which Staff anticipates will be filed by PSE [on February 1, 2013].¹ The requested continuance should not prejudice any of the parties to this case. Furthermore, the requested extension of time is not inconsistent with the public interest or the Commission's administrative needs. Indeed, the public interest will be served by a global resolution of the five dockets referenced above. Good cause, therefore, exists for the Commission to grant the requested extension of time.

4 Staff also directs the Commission's attention to RCW 34.05.470(3) and WAC 480-07-850(5), which provide, in the words of the rule, that: "A petition for reconsideration is deemed denied twenty days after the date the petition is filed, unless the commission either: (a) Enters an order resolving the petition; or (b) Serves the parties with a written notice specifying the date by which it will act on the petition." The twenty-day deadline for action in this docket occurs on February 11, 2013.

5 Staff filed its motion on a Friday, five calendar days prior to the date as to which it seeks a continuance, not five business days as required by WAC 480-07-385(3). The Commission was unable to give notice of a shortened response period until Monday, February 4, 2013. WAC 480-07-385(3) also requires that any responses be filed at least two days prior to the procedural date as to which continuance is sought. Thus, the parties who wished to respond were required to do so by the close of business on February 4, 2013. All of the other parties to Docket UE-121373—Public Counsel, the Industrial Customers of Northwest Utilities (ICNU) and the Northwest Energy Coalition (NVEC)—submitted their responses electronically on February 4, 2013, as required by the Commission's notice. The Northwest Industrial Gas Users (NWIGU) also commented on Staff's motion because of the organization's interest in another docket implicated by the motion. The Commission appreciates the responding

¹ See, In the Matter of the Petition of Puget Sound Energy, Inc. and NW Energy Coalition, for an Order Authorizing PSE to Implement Electric and Natural Gas Decoupling Mechanisms and to Record Accounting Entries Associated with the Mechanisms, Dockets UE-121697 and UG-121705; In the Matter of Puget Sound Energy, Inc.'s Expedited Rate Filing, Dockets UE-13XXXX and UG-13XXXX.

parties' exceptional efforts to facilitate resolution of Staff's motion with due attention to all parties' rights to be heard.

6 NWEC does not object to Staff's motion. NWIGU, albeit not a party to Docket UE-121373, expresses its concern that Staff's motion includes reference to ongoing efforts between Staff and PSE in Docket UG-121705, in which NWIGU is participating, and Docket UG-130138, in which NWIGU expects to intervene. Docket UG-121705 concerns the gas side of a joint petition by NWEC and PSE for full decoupling for PSE's gas and electric rates.² Docket UG-130138 is the gas side of PSE's so-called Expedited Rate Filing (ERF), filed on February 4, 2013.³ NWIGU urges that the Commission make clear in this order that any extension of time granted for responses to PSE's petition for reconsideration in Docket UE-121373 "is unrelated to any settlement negotiations in either PSE's Decoupling Docket or PSE's Expedited Rate Filing." NWIGU states that these "negotiations should be allowed to proceed on their own timeframe with all parties in those dockets involved."

7 Significant parts of Public Counsel's and ICNU's responses to Staff's motion for continuance also focus on Staff's representations that a continuance in Docket UE-121373 will facilitate resolution not only of the pending motion for reconsideration in that docket, but also resolution of Dockets UE-121697, UG-121705, UE-130137 and UG-130138. Public Counsel and ICNU argue that there is no legal or factual nexus connecting these five dockets.⁴ They object strongly to the fact that Staff has initiated settlement discussions in the decoupling dockets and the ERF dockets without giving notice and opportunity for others to participate. They argue that it is not within the realm of possibility that these matters can be resolved in the next 30 days under such circumstances. It follows, they contend, that the prospect of settlement being achieved in these dockets is not a basis for a continuance in Docket UE-121373.

8 Public Counsel and ICNU also argue that there is no independent reason to grant a continuance in Docket UE-121373. Public Counsel says it would be prejudiced by the requested extension of time because:

² The electric decoupling proposal is docketed as Docket UE-121697.

³ The electric side of the ERF is docketed as Docket UE-130137.

⁴ Public Counsel does see a possible connection between the decoupling dockets and the ERF, but no connection between these matters and Docket UE-121373 in which Staff seeks a continuance.

Public Counsel and PSE's customers have an interest in administrative finality with respect to the Centralia docket [*i.e.*, Docket UE-121373]. 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.

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. This substantially prejudices the rights of Public Counsel and PSE customers in this docket.

- 9 Finally, Public Counsel and ICNU challenge the propriety of a settlement being brought forward at the reconsideration stage of Docket UE-121373. ICNU says it has not had time to fully explore and develop the point, but argues "it is far from clear that Staff can legally settle this docket, which is subject to a Commission decision on its merits." ICNU states:

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. 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.

10 Public Counsel argues similarly that:

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.

11 We acknowledge the concerns expressed by Public Counsel and ICNU with respect to Staff's suggestions concerning the potential for settlement of multiple dockets, two of which were only recently filed, on an abbreviated schedule. We acknowledge, too, these parties' more direct concerns with the idea of settlement negotiations concerning PSE's pending petition for reconsideration that have not involved the other parties to this proceeding. We nevertheless determine that there is good cause to grant Staff's motion for a continuance to provide an opportunity for more measured and deliberate consideration of these matters. We do not find that any party will be prejudiced by the brief continuance Staff proposes. If broader discussions among the parties prove effective, any substantive proposal brought to the Commission in this, or another docket, can be given due consideration. If not, parties will still have the opportunity to respond to PSE petition for reconsideration in Docket UE-121373 and the Commission will resolve it in due course.

12 In addition to finding good cause to grant Staff's motion and continue until March 8, 2013, the date for responses to PSE's pending Petition for Reconsideration and Motion to Reopen the Record, the Commission finds it appropriate to give notice under WAC 480-07-850 of its intention to take final action with respect to the petition and motion no later than March 29, 2013, subject to revision by further notice, if appropriate in light of developments.

13 **THE COMMISSION ORDERS** That Staff's Motion for 30-Day Extension of Time to File Answers to Puget Sound Energy's Petition for Reconsideration and Motion to Reopen the Record is **GRANTED**. The filing date for such answers is revised to March 8, 2013.

- 14 **THE COMMISSION GIVES NOTICE** That it intends to take final action with respect to PSE's pending Petition for Reconsideration and Motion to Reopen the Record in Docket UE-121373 no later than March 29, 2013, unless such date is revised by further notice in light of developments subsequent to the date of this order and notice.

Dated at Olympia, Washington, and effective February 5, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge