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March 12, 2013

SENT VIA E-MAIL AND ABC LEGAL MESSENGER

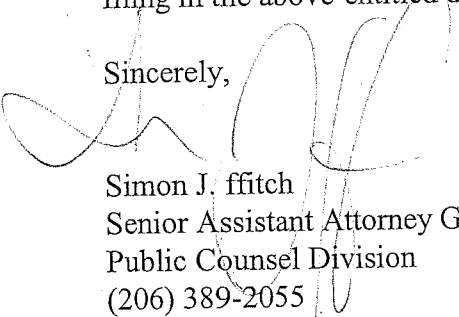
Steven V. King
Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

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. King:

Enclosed please find the original and ten (10) copies of Joint Public Counsel and ICNU Response to Staff and PSE Motion for Second Extension of Time to File Answers to PSE's Petition for Reconsideration and Motion to Reopen the Record and Certificate of Service for filing in the above-entitled docket.

Sincerely,



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

SJf:cjb
Enclosures

CERTIFICATE OF SERVICE
Docket UE-121373

I hereby certify that a true and correct copy of the Joint Public Counsel and ICNU Response to Staff and PSE Motion for Second Extension of Time to File Answers to PSE's Petition for Reconsideration and Motion to Reopen the Record 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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NANCY HIRSH *
POLICY DIRECTOR

DATED: March 12, 2013.



CAROL BAKER
Legal Assistant

**BEFORE THE WASHINGTON STATE 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 NO. UE-121373

JOINT PUBLIC COUNSEL AND
ICNU RESPONSE TO STAFF AND
PSE MOTION FOR SECOND
EXTENSION OF TIME TO FILE
ANSWERS TO PSE'S PETITION
FOR RECONSIDERATION AND
MOTION TO REOPEN THE
RECORD

I. INTRODUCTION

1. Public Counsel and Industrial Customers of Northwest Utilities (ICNU) (Joint Responders) submit this joint response to Commission Staff and PSE's (Joint Movants) Motion for Second Extension of Time to File Answers To Puget Sound Energy's (PSE) Petition for Reconsideration And Motion To Reopen The Record (Staff/PSE Motion), dated March 6, 2013. Staff has not demonstrated good cause as required by Commission rule, either for the late filing of the request or for the extension itself.
2. The interests of Joint Responders and PSE's residential and industrial customers are prejudiced by the continuance requested, delaying resolution of this docket and improperly linking it to the unrelated PSE Expedited Rate Filing (ERF)¹ and Decoupling² dockets, both of which contain newly filed proposals still under review. Evaluation of the ERF and Decoupling issues is wholly unrelated to the Centralia docket. Good cause cannot be based on Staff and

¹ Dockets UE-130137 and UG-130138.

² Dockets UE-121697 and UG-121705.

JOINT PC AND ICNU RESP. TO STAFF
AND PSE MOT FOR SECOND EXT OF
TIME TO FILE ANSWERS TO PSE'S
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REOPEN THE RECORD

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PSE's improper efforts to renegotiate the terms of the Commission's Final Order in this docket in derogation of the Commission's own authority. Nor can good cause be found in the entirely unexplained linkage of this docket to the ERF and Decoupling dockets, nor in the apparent desire of PSE to employ the Centralia docket as a form of leverage in the other dockets.

3. Public Counsel and ICNU respectfully request that the second motion for extension be denied and the Commission proceed to resolve this docket on its own promptly and expeditiously.

II. RESPONSE TO STAFF'S MOTION

A. The Motion Is Untimely.

4. As with the initial motion for an extension, Staff's motion is again filed late, again without acknowledgement of the rule, and again without any effort to justify the untimely filing. Such cavalier disregard of the Commission's rules should not be countenanced. 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 deadline for this motion, therefore, was, March 1, 2013. The motion was filed three business days late, on March 6, 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," the Joint Movants Motion does not acknowledge that it was filed after the deadline nor does it state or demonstrate good cause for the untimeliness. Joint Movants identify no circumstance that prevented Staff from filing the motion in a timely manner. Joint Movants have been aware of the impending deadline and fully aware of the status of the docket, yet chose to wait until 48 hours

before the deadline to request an extension. The Commission simply should not permit its rules to be disregarded in this manner.

B. Good Cause Has Not Been Demonstrated To Justify A Second Continuance.

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

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 failed to meet these standards in its second request.

6. As with the initial request, the only justification stated for Staff's request is that this new continuance "will allow the parties additional time to endeavor to reach a resolution of not only" the Centralia docket but also the Decoupling and ERF dockets.³ The Staff states that the "public interest would be served by a global resolution" of these dockets but provides no factual, legal, or policy support for the statement.⁴

7. Staff and PSE have failed to identify any factual, legal, or policy connection between this Centralia PPA docket and the other two PSE dockets mentioned, nor have they explained why parties should be expected or required to negotiate them together. Public Counsel and ICNU submit that there is no connection.⁵ Staff provides no reason why this proceeding should be delayed by linking it to further process in unrelated dockets. Indeed, the Commissioners commented at the recessed open meeting on March 5 that they are viewing the dockets as

³ Staff/PSE Motion, ¶ 3.

⁴ *Id.*

⁵ 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 the facts or principles of law are related." WAC 480-07-320. No such showing has been made here.

separate. Joint Responders submit that it is not in the public interest to link these dockets through a procedural motion designed to inexplicably produce some form of “global” settlement.

8. Moreover, Staff and PSE have yet to explain how “settlement discussions” regarding Centralia can occur at all. Settlement discussions were convened earlier in the proceeding pursuant to Commission order and settlement rules, but were not successful. Later, an evidentiary hearing and oral argument were held before the Commission, and the case was submitted for decision. A Final Order was issued based on that record and the applicable law, and the record is now closed.⁶

9. 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 Commission’s decision, 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. As the Commission rules state: “[t]he Commission cannot delegate to parties the power to make final decisions in any adjudicative proceeding.”⁷ 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.⁸ There is no provision in the Commission rules for the settlement procedure suggested by Staff, 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

⁶ Subject to a ruling of PSE’s Motion to Reopen.

⁷ WAC 480-07-700(1).

⁸ WAC 480-07-800 through 885.

reconsideration process are improper. Staff and PSE have not responded to these objections, nor has the Commission provided any guidance to the parties that would explain how a Final Order could or should be “negotiated,” and potentially changed.

10. As noted, Joint Movants assert that the continuance will allow additional time to reach a resolution of three PSE dockets. Strikingly absent is any explanation of why this docket must be delayed to allow negotiations to occur in the other dockets. The procedural status of the ERF and Decoupling dockets is unclear at this time. Neither docket has a schedule, no protective order has been issued, and the discovery rules are not in place. Both dockets involve newly filed proposals and testimony that parties must be able to review and examine through discovery before meaningful negotiations can occur. With regard to the ERF docket, in the absence of a prehearing conference notice and clear intervention process, it is uncertain who the participants in the docket will be. Thus, the procedural posture of the dockets makes it difficult to reach a thoughtful resolution at this time.

C. The Requested Continuance Will Prejudice Public Counsel, ICNU and other 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.”⁹ Public Counsel and ICNU, however, would be prejudiced by the requested extension of time. Public Counsel, ICNU, and PSE’s customers have an interest in administrative finality with respect to the Centralia docket. Staff provides no basis for this Commission to believe that the Decoupling or ERF dockets can be fully resolved in 28 more days. Staff’s Motion creates the risk, indeed the likelihood, that the Centralia docket resolution

⁹ Staff/PSE Motion, ¶ 3.

could be delayed for some indeterminate period beyond 28 days as the issues in the other dockets are developed.

12. In addition, the procedure requested by Staff and PSE does not provide any certain opportunity for Joint Responders to respond to the petition for reconsideration. It is not clear when, if ever, Public Counsel, ICNU, or other parties would be able to file that response. The impact of the Staff/PSE Motion, 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.¹⁰ This substantially prejudices the rights of Public Counsel, ICNU and PSE customers in this docket.

13. Finally, Public Counsel and other yet to be determined parties would be prejudiced in the newly filed PSE ERF docket and in the Decoupling 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 or to respond to the supporting testimony and exhibits filed.¹¹ PSE's customers are entitled to an adequate opportunity to conduct a fair review of the Company's new proposal and to provide their own recommendations if appropriate.

¹⁰ 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.

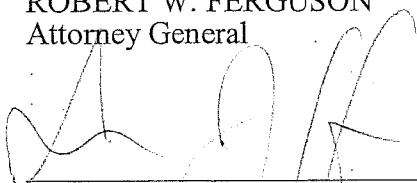
¹¹ At the recessed open meeting on March 5, PSE made a number of statements about the discussions held with parties last fall regarding expedited ratemaking. Public Counsel and ICNU dispute the accuracy of the representations in many key respects. Public Counsel and ICNU reject the apparent suggestion that parties who participated in preliminary discussions last year are not entitled to a fair process for review when an actual proposal is filed.

III. CONCLUSION

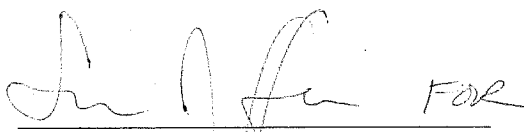
14. Staff's Motion is untimely. It fails to establish good cause for late consideration. With regard to the continuance itself, Staff fails entirely to demonstrate that there is good cause for postponing the filing of responses, or postponing the resolution of this case. The Motion reflects an improper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

DATED this 12th day of March, 2013.

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Attorney General



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Public Counsel Division



Industrial Customers of NW Utilities
Melinda Davison
Of Attorneys for ICNU

By Email Authorization