

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	DOCKET NOS. UE-011570 and
)	UG-011571 (consolidated)
v.)	
)	
PUGET SOUND ENERGY, INC.,)	NOTICE RE POTENTIAL
)	EX PARTE CONTACT
Respondent.)	
)	
.....)	

1 On November 26, 2001, Puget Sound Energy, Inc. filed with the Commission certain tariff revisions designed to effect a general rate increase in its rates for electric service and gas service provided in this state. On December 3, 2001, Puget Sound Energy, Inc. filed with the Commission a Petition for Interim Rate Relief for electric service provided in this state. By order of the Commission, the operation of the general and interim tariff revisions have been suspended pending a formal adjudicative hearing or hearings concerning all such changes and the justness and reasonableness thereof.

2 Hearing in these matters is being held pursuant to Part IV of chapter 34.05 RCW pertaining to adjudicative proceedings, including but not limited to RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission has jurisdiction over this matter pursuant to Title 80 RCW, having legal authority to regulate the rates, services, and practices of electric and gas utilities. The statutes and rules involved, in addition to those previously cited, include those within chapters 80.04 and 80.28 RCW and chapters 480-09, 480-90, and 480-100 WAC.

3 WAC 480-09-140 is among the rules that govern adjudicative proceedings before the Commission. The rule provides:

Ex parte communications. (1) General. After an adjudicative proceeding begins and before a final determination, no party to the

proceeding, or counsel for a party or other person on behalf of a party, shall discuss the merits of the proceeding with the commissioners, the presiding officer or the commissioners' staff assistants assigned to advise the commissioners in the decisional process in that proceeding, unless reasonable notice is given to all parties to the proceeding, so that they may attend the conference. When a party initiates correspondence with a presiding or reviewing officer regarding any pending proceeding, the party shall serve a copy of the correspondence upon all parties of record and furnish proof of that service to the commission.

(2) Communications necessary to procedural aspects of maintaining an orderly process, such as scheduling, are not ex parte communications prohibited by RCW 34.05.455 or by this rule.

(3) The commission may prescribe appropriate sanctions, including default, for any violation of RCW 34.05.455 or this section.

- 4 The full text of RCW 34.05.455 is set forth in Appendix A to this Notice for ease of reference. Among other things, RCW 34.05.455 expressly provides that:

(2) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining an orderly process, a presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding, with any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

* * *

(5) A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the matter unless a party moves the admission of any

portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to RCW 34.05.452.

* * *

(7) The agency shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section.

5 On or about November 28, 2001, ten Puget Sound Energy shareholders, apparently a core group within an organization that calls itself “Puget Energy Shareholders for Fairness,” lent their names to and published a six-page letter to fellow shareholders. The letter, which is attached as Appendix B to this Notice, urges shareholders to contact the Commission and public officials concerning this proceeding.¹

6 Because this conduct may be viewed as an attempt, directly or indirectly, to encourage ex parte communications to the Commission on behalf of Puget Sound Energy, the Commission will follow the requirements set forth in WAC 480-09-140 and RCW 34.05.455. The letter, by this Notice, is made a matter of record. Parties may respond, if they choose. Other letters that are identical in form, or that appear to be sent in response to the form letter, will be filed along with all other letters received from members of the public in connection with this proceeding. Absent an alternative proposal by any party, accepted by the Commission, these letters will not be read by the Commissioners unless, and until, they are made part of the formal record. That can be accomplished by Public Counsel, PSE, or another party moving all or part of the correspondence for admission, subject to objection by any other party. This is the customary treatment for correspondence received by the Commission from members of the public who are not parties to, but who are interested in, matters that are to be determined by the Commission in quasi-judicial proceedings.

7 We emphasize that we do not wish to dampen public input to our processes. Members of the public, including PSE’s shareholders, have a right to communicate

¹ We note that a similar effort was undertaken by a shareholder group with the same name during a prudence review following the Company’s last general rate proceeding. *See WUTC v. Puget Sound Power & Light Co.*, Docket Nos. UE-920433, UE-920499, and UE-921262, Nineteenth Supplemental Order (September 27, 1994) at 41-42 (Commission discussion of ex parte issue and admonition to the Company).

their views through proper channels consistent with the requirements of law that govern our proceedings. PSE and its advisors, and all other parties and their advisors, are, or should be, fully aware of what is legally and ethically required of the Company and its shareholders in this connection.

- 8 We have a paramount interest and a legal duty to protect the sanctity of the quasi-judicial role entrusted to us. The parties and their counsel who appear before us also have a legal and ethical duty to ensure that no violations of legal process occur, particularly violations meant to undermine our duty to act impartially in the broader public interest. We expect all parties to govern themselves accordingly.

Dated at Olympia, Washington, and effective this 9th day of January, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

APPENDIX A

RCW 34.05.455 Ex parte communications. (1) A presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any person employed by the agency without notice and opportunity for all parties to participate, except as provided in this subsection:

(a) Where the ultimate legal authority of an agency is vested in a multimember body, and where that body presides at an adjudication, members of the body may communicate with one another regarding the proceeding;

(b) Any presiding officer may receive aid from legal counsel, or from staff assistants who are subject to the presiding officer's supervision; and

(c) Presiding officers may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

(d) This subsection does not apply to communications required for the disposition of ex parte matters specifically authorized by statute.

(2) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining an orderly process, a presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding, with any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(3) Unless necessary to procedural aspects of maintaining an orderly process, persons to whom a presiding officer may not communicate under subsections (1) and (2) of this section may not communicate with presiding officers without notice and opportunity for all parties to participate.

(4) If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5) of this section.

(5) A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the matter unless a party moves the admission of any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to RCW 34.05.452.

(6) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a presiding officer who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by protective order.

(7) The agency shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section. [1988 c 288, 416.]