



Bob Ferguson  
**ATTORNEY GENERAL OF WASHINGTON**

800 Fifth Avenue #2000 • Seattle WA 98104-3188

April 12, 2013

**SENT VIA E-MAIL AND ABC/LMI**

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

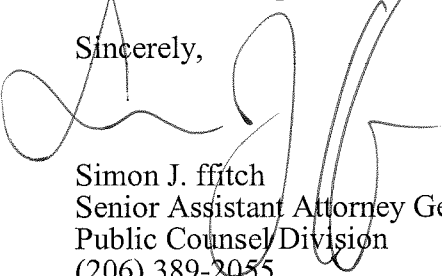
*In the Matter of the Petition of PUGET SOUND ENERGY, INC. and NW ENERGY COALITION, For an Order Authorizing PSE to Implement Electric and Natural Gas Decoupling Mechanisms and to Record Accounting Entries Associated with the Mechanisms*  
Dockets UE-121697 and UG-121705

*In the Matter of Puget Sound Energy, Inc., WN U-60, Tariff G, Electric Service, Advice No. 213-01 and WN U-2 Natural Gas Service, Advice No. 2013-02*  
Dockets UE-130137 and UG-130138

Dear Mr. King:

Enclosed please find the originals and twelve (12) copies each of Public Counsel's Motion for Leave to Reply to Staff and PSE Responses to Public Counsel's Motion for Leave to Depose Kenneth Elgin, and Public Counsel Reply to Staff and PSE Opposition to Public Counsel Motion for Leave to Depose Kenneth Elgin and Certificate of Service.

Sincerely,



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

SJf:cjb

cc: ALJ Dennis Moss (E-mail)  
Service List (E-mail & U. S. Mail)

**CERTIFICATE OF SERVICE**  
**Dockets UE-121373, UE-121697/UG-121705, UE-130137/UG-130138**

I hereby certify that a true and correct copy of Public Counsel's Motion for Leave to Reply to Staff and PSE Responses to Public Counsel's Motion for Leave to Depose Kenneth Elgin, and Public Counsel Reply to Staff and PSE Opposition to Public Counsel Motion for Leave to Depose Kenneth Elgin 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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**NWIGU:**  
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SEATTLE, WA 98104

DATED: April 12, 2013.



CAROL BAKER  
Legal Assistant

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of ) DOCKET UE-121373

)  
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 )

)  
..... )  
In the Matter of the Petition of ) DOCKETS UE-121697 and  
) UG-121705

)  
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-130137 and  
) UG-130138

)  
WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )

)  
Complainant, )

v. )

)  
PUGET SOUND ENERGY, INC., )

)  
Respondent. )

)  
..... )  
PC MOT FOR LEAVE TO REPLY TO )  
STAFF AND PSE OPPOSITION TO PC )  
MOT FOR LEAVE TO DEPOSE )  
KENNETH ELGIN )

) PUBLIC COUNSEL MOTION FOR  
) LEAVE TO REPLY TO STAFF AND  
) PSE OPPOSITION TO PUBLIC  
) COUNSEL MOTION FOR LEAVE  
) TO DEPOSE KENNETH ELGIN

) *EXPEDITED CONSIDERATION*  
) *REQUESTED*

## I. MOTION

1. Pursuant to WAC 480-07-370(4)(d), the Public Counsel Section of the Washington Attorney General's Office (Public Counsel) files this Motion for Leave to Reply to Commission Staff's Opposition to Public Counsel's Motion for Leave to Depose Kenneth Elgin, filed April 11, 2013 (Staff Opposition). The motion and attached reply are also generally responsive to the points made in the PSE response filed April 12, 2013.<sup>1</sup>
2. Public Counsel respectfully requests leave to reply to Staff's Opposition due to new and unanticipated statements and arguments by Staff. Public Counsel continues to request expedited consideration of this motion, and of the motion filed on April 10, 2013, because the motions address discovery to take place on April 17, 2013, that will assist in preparing for the hearing scheduled for May 16, 2013.

## II. STATEMENT OF FACTS

3. Pursuant to WAC 480-07-375(1)(c) and WAC 480-07-410(1), Public Counsel filed a Motion for Leave to Depose Kenneth Elgin, Special Deputy Director of Regulatory Services, on April 10, 2013. On the same day, Public Counsel provided notice of its intention to depose Mr. Elgin. Public Counsel wishes to depose Mr. Elgin as a non-witness, thus request for leave to depose Mr. Elgin is necessary before the deposition may take place.
4. Commission Staff responded to the Motion for Leave to Depose on April 11, 2013, alleging that Public Counsel and Mr. Elgin have somehow collaborated improperly and that Public Counsel wishes to take Mr. Elgin's deposition for reasons other than a good faith effort to

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<sup>1</sup> Puget Sound Energy, Inc.'s Response to Public Counsel's Motion for Leave to Depose Kenneth Elgin (PSE Opposition).

take discovery leading to relevant evidence regarding the above-captioned dockets. The allegations regarding Public Counsel's bad faith are untrue. In addition, arguments regarding the propriety of Mr. Elgin as deponent are not well founded. Due to the nature of the allegations and arguments, Public Counsel should be allowed an opportunity to respond.

5. As detailed in our Reply, submitted herewith, Public Counsel has a reasonable basis under the Commission's rules to seek discovery from a Staff member who has participated in the analysis of the proposals being made in these dockets. As noted in our Motion for Leave to Depose, Public Counsel asked certain Data Requests of Commission Staff and received responses to those Data Requests on April 3, 2013. Included in those responses was information regarding Staff's analysis and the Staff members performing that analysis which included Mr. Elgin. This is a reasonable and proper basis for Public Counsel to depose Mr. Elgin.

### III. CONCLUSION

6. For the reasons stated above, Public Counsel respectfully requests that the Commission grant leave to reply to Commission Staff's Opposition to Public Counsel's Motion for Leave to Depose Kenneth Elgin. Public Counsel further requests expedited treatment of this Motion to

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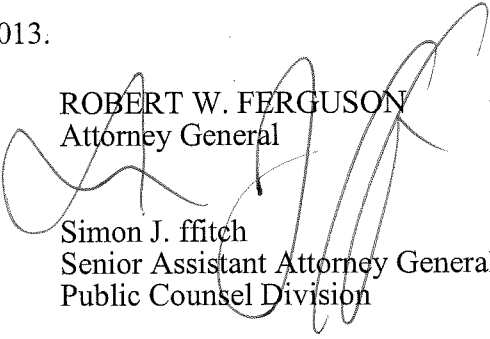
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allow for timely completion of Mr. Elgin's deposition and meaningful opportunity to prepare for hearing.

7. DATED this 12<sup>th</sup> day of April, 2013.



ROBERT W. FERGUSON  
Attorney General

Simon J. Fitch  
Senior Assistant Attorney General  
Public Counsel Division

Lisa W. Gafken  
Assistant Attorney General  
Public Counsel Division

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of ) DOCKET UE-121373  
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PUGET SOUND ENERGY, INC., )  
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For Approval of a Power Purchase )  
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Transition Power, as Defined in RCW )  
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PUGET SOUND ENERGY, INC., )  
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WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )  
) PUBLIC COUNSEL'S REPLY TO  
Complainant, ) STAFF AND PSE RESPONSES TO  
) PUBLIC COUNSEL'S MOTION FOR  
v. ) LEAVE TO DEPOSE KENNETH  
) ELGIN  
PUGET SOUND ENERGY, INC., )  
) *EXPEDITED CONSIDERATION*  
Respondent. ) *REQUESTED*  
..... )

PC REPLY TO STAFF AND PSE  
RESPONSES TO PC'S MOT FOR LEAVE  
TO DEPOSE KENNETH ELGIN



## I. INTRODUCTION

1. The Public Counsel Section of the Washington Attorney General's Office (Public Counsel) submits the following Reply to Commission Staff's Opposition to Public Counsel's Motion for Leave to Depose Kenneth Elgin (Staff Opposition). This pleading is also intended to respond to the points made in PSE's Response to Public Counsel's motion, filed April 12.

## II. REPLY

### A. Mr. Elgin Is An Appropriate Deponent Under The Commission Rules.

2. The Commission rules allow for depositions of non-witnesses with leave of the presiding officer, if the person "appears to possess information significant to the party's case."<sup>1</sup> Although Mr. Elgin has not been identified as a witness for Commission Staff, he has been identified in discovery as one of the Staff persons who has conducted analysis for Staff of the ERF and Decoupling proposals, in particular the ERF and "K" Factor. Specifically, Public Counsel Data Request No. 6 to Staff requested information about the "analyses and tests undertaken by Staff personnel in assessing the reasonableness of PSE's ERF and Decoupling proposals." (See Attachment A). The response identifies Mr. Elgin, *inter alia*, and provides documents regarding his analysis. Public Counsel Data Request No. 7 asked for the identification of Staff members "involved in the review of the reasonableness of PSE's proposals" and their specific areas of review. Mr. Elgin, *inter alia*, was identified as being involved in "Specific analysis of the ERF and K factor." (See Attachment B). Mr. Elgin's initial proposal for an expedited rate filing (ERF) mechanism was favorably noted in the PSE 2011 GRC order, and triggered the development and filing of PSE's ERF proposal in this docket.<sup>2</sup>

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<sup>1</sup> WAC 480-07-410(1).

<sup>2</sup> See, Schooley Testimony in Support of Multiparty Settlement, TES-1T, p. 5:18-6:8, TES-2, p. 4 (item 1).

3. For the foregoing reasons, Mr. Elgin is, therefore, an appropriate deponent under the rule, and his deposition testimony is reasonably calculated to lead to discovery of admissible evidence. His knowledge and analysis of the ERF, and the K-factor, an integral component of the decoupling and rate plan proposals, are significant to Public Counsel for purposes of analyzing the PSE proposal and the Staff position in the case. This does not constitute making Mr. Elgin Public Counsel's witness, as Staff alleges. Public Counsel is aware of the ruling regarding the scope of discovery regarding the settlement. Questioning will address substantive issues and analysis. Staff can raise any concerns about the scope to the ALJ during the deposition.<sup>3</sup>

4. Staff's arguments regarding discovery of settlements are inapposite. The Administrative Law Judge in this matter was clear at the Prehearing Conference that while labeled a multiparty settlement, the Staff/PSE/NWEC agreement is being treated as a joint position for purposes of the adjudication.<sup>4</sup> Public Counsel, and any other party, is entitled to conduct discovery to understand the basis of another party's position in the case.<sup>5</sup>

**B. Staff Allegations Of Misconduct And Improper Motivation Are False.**

5. Staff's Opposition contains an unfortunate series of inappropriate and unfounded allegations and mischaracterizations regarding Public Counsel's activities and motivations. For example, Staff states that Public Counsel and Mr. Elgin have somehow collaborated improperly. These allegations are false and meritless. Public Counsel respectfully requests its motion be

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<sup>3</sup> Two depositions of Staff members have already taken place without a request for intervention by the ALJ on that issue.

<sup>4</sup> WAC 480-07-030(3).

<sup>5</sup> WAC 480-07-410(3) also states that "Each party will be responsible for the attendance of ...any of its employees, who have been scheduled for deposition." Staff is appearing as a "party" in this proceeding and the rule would apply, if the Public Counsel motion is granted.

decided on the merits under the discovery rules. If the Commission feels it is necessary to address the Staff allegations in order to decide the motion, Public Counsel is prepared to file affidavits responding in detail to Staff's assertions, and requests a further opportunity to do so, in that event.

### III. CONCLUSION

6. Public Counsel continues to request that the Commission grant leave to depose Mr. Elgin. Additionally, Public Counsel continues to request expedited treatment of its Motion for Leave to Depose to allow for timely completion of Mr. Elgin's deposition and meaningful opportunity to prepare for hearing.

7. DATED this 12<sup>th</sup> day of April, 2013.

ROBERT W. FERGUSON  
Attorney General



Simon J. Ffitch  
Senior Assistant Attorney General  
Public Counsel Division

Lisa W. Gafken  
Assistant Attorney General  
Public Counsel Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
STAFF RESPONSES TO PUBLIC COUNSEL DATA REQUESTS

DATE PREPARED: April 3, 2013  
DOCKETS: UE-121697/UG-121705 and  
          UE-130137/UG-130138  
REQUESTER: Public Counsel

WITNESS: Commission Staff  
RESPONDER: Commission Staff  
TELEPHONE:

**REQUEST NO. 6:** Please provide all analyses and tests undertaken by Staff personnel in assessing the reasonableness of the Company's ERF and Decoupling proposals. With this request we are seeking:

- a. Any spreadsheet calculations that may have been undertaken to test the reasonableness of any element of PSE's request or assertions being made by PSE.
- b. Any independent assessment from review of any publicly available documentation – such as reviews of SEC filings, FERC Form 1 filings, and CBRs
- c. A narrative discussion of reviews/analyses undertaken that did not necessarily result in the creation of spreadsheet workpapers, but entailed reviews such as comparing ERF test year adjustments to test year adjustments proposed/adopted in PSE's most recent retail rate docket.
- d. Any studies, memos, or reports prepared by any Staff personnel, including outside consultants as may be applicable, involved in each docket that discusses or summarizes any findings, conclusions or recommendations.

**RESPONSE:**

Commission Staff objects to Public Counsel Data Request No. 6 to the extent it seeks information protected by the attorney-client privilege, work product doctrine, deliberative process, and Evidence Rule 408, which protects the confidentiality of settlement negotiations. Without waiving these objections and subject thereto Commission Staff responds as follows:

See attached responses from the follow Commission Staff individuals:

Thomas Schooley  
Kendra White  
Ken Elgin  
EJ Keating  
Joanna Huang

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
STAFF RESPONSES TO PUBLIC COUNSEL DATA REQUESTS

DATE PREPARED: April 3, 2013  
DOCKETS: UE-121697/UG-121705 and  
          UE-130137/UG-130138  
REQUESTER: Public Counsel

WITNESS: Commission Staff  
RESPONDER: Commission Staff  
TELEPHONE:

In addition, Joanna Huang states the following:

I reviewed all restating adjustments included in the Commission Basis Report (Gas) in UG-130138.

Pension Plan( Gas): Order 08 in UE-111049 indicates that the Pension adjustment was uncontested. PSE used the average of the last 4 years of cash pension contributions to adjust the test year level of pension expense.

Incentive / Merit Pay (Gas): PSE used the average of the last 4 years of incentive pay minus the amount paid to officer's portion to adjust the test year level of incentive. This is the same calculation in UE-111048.

Bad Debt (Gas): PSE removed the highest and lowest write-offs for the last 5 years to adjust the test year level of bad debt. PSE made an error. Please see my attachments. This adjustment affects not only the conversion factor but also the net operating income calculations. My adjustment to PSE revenue requirement deficiency is \$(1,268,682). PSE did not make the same error in the electric operations. Therefore, there is no bad debt adjustment in UE-130137.

AMA vs. EOP: Although PSE used the Commission Basis Report to speed up the filing process without any rate base and pro forma adjustments, PSE used End of Period amount for the rate base amount. The Commission Basis Report has used AMA to calculate the rate base amount in the past. I emailed Mr. Schooley for guidance in this matter. He told me to use the EOP.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
STAFF RESPONSES TO PUBLIC COUNSEL DATA REQUESTS

DATE PREPARED: April 3, 2013  
DOCKETS: UE-121697/UG-121705 and  
UE-130137/UG-130138  
REQUESTER: Public Counsel

WITNESS: Mark Vasconi  
RESPONDER: Mark Vasconi  
TELEPHONE: 360-664-1308

**REQUEST NO. 7:** For each Staff employee or consultant involved in the review of the reasonableness of PSE's proposals, please:

- a. State the name and position of each employee/consultant
- b. Provide a narrative discussion/description of various activities undertaken by each person in the review process
- c. Provide actual or approximate hours devoted to each review activity delineated in response to subpart (b), as well as total actual/estimated hours devoted to the review process.

**RESPONSE:**

Commission Staff objects to Public Counsel Data Request 7(c) as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Commission Staff further objects to Public Counsel Data Request 7(c) as unduly burdensome. Without waiving these objections and subject thereto Commission Staff responds as follows:

- a. State the name and position of each employee/consultant

Mark Vasconi – Directory, Regulatory Services  
Thomas Schooley – Assistant Director, Energy  
Deborah Reynolds – Assistant Director, Conservation and Energy Planning  
Ken Elgin – Special Assistant to Director (Acting)  
EJ Keating – Regulatory Analyst III  
Joanna Huang – Regulatory Analyst III  
Christopher Mickelson – Regulatory Analyst III  
Kendra White – Regulatory Analyst II  
Chris McGuire – Regulatory Analyst II  
Juliana Williams – Regulatory Analyst II

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
STAFF RESPONSES TO PUBLIC COUNSEL DATA REQUESTS

DATE PREPARED: April 3, 2013  
DOCKETS: UE-121697/UG-121705 and  
          UE-130137/UG-130138  
REQUESTER: Public Counsel

WITNESS: Mark Vasconi  
RESPONDER: Mark Vasconi  
TELEPHONE: 360-664-1308

- b. Provide a narrative discussion/description of various activities undertaken by each person in the review process

Mark Vasconi – Directory, Regulatory Services.  
General overview of PSE proposals.

Thomas Schooley – Assistant Director, Energy.  
Specific analysis of ERF and K Factor.

Deborah Reynolds – Assistant Director, Conservation and Energy Planning. Specific analysis of decoupling policy

Ken Elgin – Special Assistant to Director (Acting).  
Specific analysis of ERF and K-Factor

EJ Keating – Regulatory Analyst III.  
Specific Analysis of ERF (electric)

Joanna Huang – Regulatory Analyst III  
Specific Analysis of ERF (gas)

Christopher Mickelson – Regulatory Analyst III  
Specific Analysis of Decoupling, rate design and rate spread, K-Factor and earnings test

Kendra White – Regulatory Analyst II  
Specific analysis of K-Factor and ERF

Chris McGurie – Regulatory Analyst II  
Specific analysis of Decoupling

Juliana Williams – Regulatory Analyst II  
Specific analysis of low income, decoupling, rate spread and rate design