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April 15, 2013

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: *In the Matter of the 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 (Consolidated)*

*WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION v. PUGET SOUND ENERGY, INC, Dockets UE-130137 and UG-130138 (Consolidated)*

Dear Mr. King:

If permitted to respond to Public Counsel's reply to the responses of Commission Staff and PSE in opposition to Public Counsel's motion for leave to depose analyst Kenneth Elgin, Commission Staff would offer the following:

Public Counsel's motion for leave to depose Mr. Elgin provided no basis for granting such extraordinary relief. Public Counsel sought generally for the Commission to allow a deposition of Mr. Elgin "regarding all matters related to the proposals under consideration." In Public Counsel's reply to Staff's response, Public Counsel now identifies Staff's responses to Public Counsel Data Requests 6 and 7 as the bases for the request for leave to depose Mr. Elgin. While Public Counsel's reply now attempts to make the requisite showing under WAC 480-07-410(1), the request for leave to depose Mr. Elgin should nonetheless be denied.

In its responses to Public Counsel Data Requests 6 and 7, Commission Staff, while preserving its objections, and in the interests of full disclosure, listed Ken Elgin as an analyst

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who conducted limited early review of PSE's ERF and decoupling proposals. Mr. Elgin evidently prepared certain documents on his own initiative; those documents contain notes to himself. Some of those notes reflect Mr. Elgin's opinions that were not adopted in Commission Staff's final position on the Multi-Party Settlement. Public Counsel has been able to depose Staff's designated expert witness Mr. Schooley on Mr. Elgin's documents and notes to the extent they relate to the technical aspects of the proposed settlement agreement, in accordance with Judge Moss's prior discovery ruling. Public Counsel also is able to use those documents and notes with its own testifying and non-testifying expert witnesses to develop Public Counsel's position. However, allowing a deposition of Mr. Elgin, a non-testifying Staff employee, is an extraordinary step. Mr. Elgin holds no facts relevant and significant to this matter that are not otherwise ascertainable by Public Counsel through its own experts, depositions of designated Staff witnesses, and the voluminous records that have been provided in response to data requests.

Public Counsel is asking the Commission to set a decidedly destructive precedent. If the Commission were to authorize Public Counsel to use a deposition to obtain the dissenting personal opinion of a non-witness analyst to use against a testifying Staff analyst, then the same principle would hold true whether that dissenting analyst be in the employ of the Commission, the Company—or Public Counsel. This is an issue of institutional importance. If the Commission deems Public Counsel's determination to depose Mr. Elgin legitimate, then such an effort would be equally legitimate for any other party, by which that party could effectively turn any employee with a dissenting opinion into their own purported expert.

Commission Staff strongly urges the Commission to deny Public Counsel's motion to depose Staff analyst Ken Elgin.

Thank you for your consideration.

Respectfully submitted,



SALLY BROWN  
Senior Assistant Attorney General  
Counsel for Commission Staff

cc: All Parties